

23 MARCH 1948

I N D E X

	<u>Page</u>
Summation by the Defense (cont'd) by Mr. MIGITA	44861
Summation by the Defense (cont'd) by Mr. Cole	44901
<u>MORNING RECESS</u>	44910
Summation by the Defense (cont'd) by	44911
<u>NOON RECESS</u>	44952
Summation by the Defense (cont'd) by Mr. Cole	44953
<u>AFTERNOON RECESS</u>	45003
Summation by the Defense (cont'd) by Mr. Cole	45004
Summation by the Defense (cont'd) by Mr. Freeman	45006

1 Tuesday, 23 March 1948

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE E. H. NORTHCROFT,
14 Member from the Dominion of New Zealand, not sitting
15 from 0930 to 1600; HONORABLE JUSTICE B. V. A. ROLING,
16 Member from the Kingdom of the Netherlands, not
17 sitting from 1500 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20 - - -

21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
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MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now in session.

2 THE PRESIDENT: All the accused are present
3 except MATSUI, SHIRATORI, and UMEZU, who are repre-
4 sented by counsel. The Sugamo Prison Surgeon certi-
5 fies they are ill and unable to attend the trial
6 today. The certificates will be recorded and filed.

7 With the Tribunal's permission, the accused
8 ARAKI will be absent from the courtroom the entire
9 day conferring with his counsel.
10

11 Mr. MIGITA.

12 MR. MIGITA: Mr. President and Members of
13 the Tribunal, I shall continue on the HOSHINO Summa-
14 tion from paragraph 36 on page 42.

15 H0-36. When HOSHINO went into the office,
16 the national general mobilization law had already
17 been in force since March 1938,^{a.} and the so-called
18 Four-Year Plan for the expansion of productive power^{b.}
19 had also been put into operation since January 1939.
20 The material distribution plan had been formed year
21 by year since 1938.^{c.}

22 H0-37. At this time, supplies of materials
23 available to Japan were shrinking in the face of the
24

25 H0-36. a. Ex. 2802, T. 25212.

b. Ex. 2802, T. 25208; Ex. 842, T. 8270.

c. Ex. 2802, T. 25206.

1 trade bans of the foreign countries while demand
 2 therefor was increasing as the China Incident ex-
 3 panded, with no termination in sight.^{a.} In such a
 4 difficult situation, the plan for the expansion of
 5 productive power was resorted to in an effort to
 6 bolster Japan's weakened economy and get her by with
 7 what she had.

8 The object of this plan was to turn out
 9 producers' goods for those most necessary items cut
 10 off from Japan by the trade bans of the foreign
 11 countries, and to attempt to balance the industries.^{c.}

12 The attention paid to heavy industry in the
 13 plan was based on the need for balancing Japan's
 14 economy, her heavy industry being far inferior to her
 15 light industry. The plan aimed at no future war but
 16 took into consideration only the China Incident.
 17 It was based on a continuation of peace-time trades.^{d.}
 18 Had other wars been under consideration the plan would
 19 have been of a very different nature.^{e.} The plan was
 20 impractical and had to be constantly revised in the
 21 face of changing circumstances.^{f.} The end of the
 22 plan was set for March 1942 on paper, but those work-
 23 ing with them knew that no definite accomplishment
 24

25 HO-37. a. Ex. 3214, T. 29145. g. Ibid.
 c. Ex. 3214, T. 29147. f. T. 29146.
 d. Ibid.

could be realized by that time.^{g.}

1 HO-38. In drafting the yearly material dis-
 2 tribution plan, the Planning Board had nothing to do
 3 with any details concerning the use of the allocated
 4 materials. It only took in the over-all estimates
 5 from the various demands as submitted by various de-
 6 partments, and worked out an over-all scheme of allo-
 7 cation.^{a.} So far as their use was concerned, HOSHINO
 8 did not know where the material demanded by the army
 9 and navy went nor the use to which they were put.^{b.}
 10 This information was kept entirely secret. There
 11 was so much argument and difficulty over these allo-
 12 cations between the authorities concerned that the
 13 agreement on allocation used to be deferred considerably
 14 each year.^{c.} HOSHINO was able, however, to cut down
 15 the allocation demanded by the army and navy by a large
 16 per cent in favor of civilian needs and the expansion
 17 of productive power. The army and navy never got the
 18 full amounts of their allocations.^{d.}

20 HO-39. Prosecution summarizes HOSHINO's
 21 statement in the interrogation on these future plans as
 22 if he stated that the plan had necessarily affected

23 HO-37. g. T. 29148.
 24 HO-38. a. T. 5148-9.
 b. T. 5150; T. 29147.
 25 c. T. 29148.
 d. T. 29148.

Manchukuo unfavorably (GG-27). However, careful
 scrutiny of this part of his interrogation reveals
 that HOSHINO simply meant that the plans had no con-
 nection with the Government of Manchukuo; but the plans
 included just estimates of what to send to Manchukuo
 and what to import from her and how much and in what
 enterprises investment were to be made in Manchukuo.^{a.}
 After all, what he stated clearly shows that in these
 plans Manchukuo was treated on the same basis as any
 other foreign country having close ties with Japan in
 connection with trade and investment. All other
 evidence relied upon by the prosecution in this matter
 (GG-27) is taken from HOSHINO's Strategic Bombing
 Survey interrogations which the defense respectfully
 submits the Court should disregard on the grounds as
 stated before.

HO-40. "Outline of the Basic National
 Policy"^{a.} embodied what the "Four Important Ministers"
 had agreed upon in the "Ogikubo Conference" before
 the formation of the cabinet.^{b.} It was decided upon
 as set forth in the final text in the cabinet meeting
 on July 26th.^{c.} This was made to serve as the basis
 for the domestic policy of Japan.^{d.}

HH-30. a. T. 5138.

HH-40. a. Ex. 541, T. 6271. c. T. 36183.

b. Ex. 3655, T. 36179. c. Ibid.

1 HO-41. As to the policies decided upon in
 2 the Liaison Conference of July 27, TOJO stated that
 3 it was presented by the Supreme Command, and was
 4 approved by the Liaison Conference of the same date. ^{a.}
 5 The prosecution failed to prove that HOSHINO had any
 6 connection with this decision.
 7

8 Negotiations with France Concerning French
 9 Indo-China.

10 HO-42. The negotiations with France on
 11 this subject were commenced on August 1st between
 12 Foreign Minister MATSUOKA and French Ambassador to
 13 Japan Charles Arsene Henry, ^{a.} and an understanding
 14 was reached on August 30th after a formal exchange
 15 of notes. ^{b.} The prosecution exhibit 620 made it
 16 clear that the negotiations were conducted either
 17 by MATSUOKA or OHASHI, the Vice-Minister of Foreign
 18 Affairs, exclusively in the Foreign Office. ^{c.} None
 19 of HOSHINO's activities has ever been shown relating
 20 to the negotiations.
 21

22 Negotiations With Netherlands East Indies.

23 HO-43. Evidence shows that prosecution

24 HO-41. a. Ex. 3655; T. 36182, 36184.

HO-42. a. Ex. 3655, T. 36200.

b. Ex. 620, appendix 10, 11.

c. T. 6886.

exhibit 1311 was a draft only, ^{a.} prepared by the
1 secretarial office which Foreign Minister MATSUOKA
2 handed to Minister of Industry and Commerce KOBAYASHI
3 merely for his information or as a reference to be
4 used in his trade negotiations with the authorities
5 of Dutch East Indies. ^{b.} Evidence also shows that
6 KOBAYASHI, who was in charge of the business concerning
7 oil and other commodities, personally went to Batavia
8 in the early part of September 1940 and there con-
9 ducted trade negotiations with the Dutch delegates for
10 more than a month. ^{c.} None of the evidence has estab-
11 lished the facts alleged by the prosecution, especially
12 regarding HOSHINO's participation in this matter.
13

14 Tri-PARTITE PACT

15 1. HO-44. TOJO described all the events
16 leading up to the signing of the Tri-Partite Pact. ^{a.}
17 According to his statement, discussions concerning
18 this move had been going on privately before the
19 establishment of the Second KONOYE Cabinet; ^{b.} Foreign
20 Minister MATSUOKA was in complete charge of all nego-
21 tiations; ^{c.} the conclusion of the treaty was, in
22 effect, to carry out one of the policies which the
23

24 HO-43. a. T. 25294. b. T. 25291. c. T. 25272.
25 HO-44. a. T. 36188-95; b. T. 36189; c. T. 36188.

"Four Ministers" had agreed upon in "Ogikubo Conference."^{d.} In their conference of September 4th, the "Four Ministers" again agreed to approve the proposal made by MATSUOKA to strengthen the Japan-Germany Italy Axis;^{e.} this agreement was confirmed by the Liaison Conference and the Imperial Conference of 19 September 1940,^{f.} in which MATSUOKA stated in his reply to the President of the Privy Council that under the circumstances then prevailing a firm stand on the part of Japan was the only way war could be avoided.^{g.} MATSUOKA then proceeded to confer with Stahmer and drafted the Tri-Partite Pact, which later was decided upon by the cabinet and approved by the Privy Council September 26th.^{h.} This evidence, together with SAITO's testimony on the activities of MATSUOKA,^{i.} concerning the negotiations with Ott and Stahmer, we submit, discloses sufficiently the circumstances as to how the Tri-Partite Pact was formed and who were really responsible therefor. HOSHINO has never received any German decorations nor been recommended for receiving such in relation to the pact.^{j.}

2. The only evidence against him concerning

HO-44. d. T. 36188. g. T. 36192.
e. T. 36189. h. Ibid.
f. T. 36190. i. T. 34960.
j. Ex. 1272, T. 11352.

the pact is that showing his explanations in the
1 Privy Council Meeting. HOSHINO attended the meeting
2 of the Investigation Committee and the meeting of
3 the Privy Council held on September 26, 1940, relat-
4 ing to this pact. Both exhibit 552^{k.} and exhibit
5 553^{l.} list his name not among State Ministers but
6 among "explainers" who were mostly Chiefs of Govern-
7 ment Boards or Bureaus. In the former meeting HOSHINO
8 made some explanations about the conditions of materials
9 in order to supplement the replies made by the State
10 Ministers; however, these explanations were made in
11 answer to the question put by one councillor asking
12 them, "How about our preparations to meet the situa-
13 tions when the worst turns up?"^{n.} The true intent of
14 all concerned, we submit, can be seen clearly from
15 the decision of the Investigation Committee.^{n.} They
16 decided among others that any incitement that might
17 develop from that proposition against the United States
18 and Great Britain should be avoided, and that they
19 should demand the government authorities not to neg-
20 lect preparations for the possible worst situation.
21

22 HO-44. k. Ex. 552, p. 1.
23 l. Ex. 553, p. 2.
24 m. Ex. 552, p. 2.
25 n. Ibid, p. 9.

Plan for Japan-Manchukuo-China Block Economy.

HO-45. The plan embodied the cabinet decision of August 1st.^{a.} Its aim was to achieve a self-sufficient economy for Japan and a block economy relationship with Manchukuo and China in the face of the increasingly difficult economic condition. The economic relationship between Japan, Manchukuo and North China^{c.} had been actually inter-dependent for many reasons and it was considered even in 1932 that the trend of public opinion was in favor of the completion and the development of the block economy relationship between those three countries.^{d.} The plan, therefore, was drafted by the Planning Board in cooperation with the ministries concerned for the purpose of putting such relationship in more concrete shape in accordance with the cabinet decision.^{e.} In this plan, Japan was made to take leadership in the block because she was more advanced in highly developed industries than were the other two countries.^{f.} The goal of this plan was set ten years from November 1941.^{g.}

- HO-45. a. Ex. 2224; T. 15954.
 b. Ex. 3214, T. 29151.
 c. Ibid.
 d. Ex. 3339; T. 30692.
 e. T. 15954.
 f. T. 29151.
 g. Ex. 2224; T. 15951..

Population Policy.

1 HO-46. The main purpose of the population
2 policy was not to increase the population of Japan,
3 but to maintain the same ratio of increase which she
4 had. The necessity of this policy was felt in many
5 quarters because the rate of population increase was
6 declining due to the change in social conditions in
7 Japan and the China Incident. The goal of this policy
8 was set at 100,000,000 in 1960.^{b.} This would be around
9 the same figure if Japan could continue on up to 1960
10 with the same percentage of increase which she had had.
11 In its execution the plan presupposed a state of peace
12 (Tr. 29,151). One of its immediate effects would be a
13 decrease in the labor supply, since the plan aimed at
14 the encouragement of marriage and restriction of employ-
15 ment of women over twenty years of age.^{c.} HOSHINO's
16 connection with the population plan was slight, being
17 limited to an explanation of it as was his responsibi-
18 lity according to custom, and he did not show much
19 interest in it nor express an opinion thereon even to
20 his Vice-President, OBATA.^{d.} The population plan was
21 prepared substantially by the Welfare Ministry, not
22 the Planning Board, and that ministry was to carry it

23 HO-46. b. Ex. 865; Tr. 8808.
24 c. Tr. 29,152.
25 d. Ibid.

out.^{e.} It may be noted in passing that exhibit 1067^{f.} states that HOSHINO merely explained the plan at the cabinet meeting, whereas the War, Welfare and Education Ministers expressed their opinion of it.

Mobilization Law.

HO-47. The prosecution exhibit 1055^{a.} relating to this subject, is an extract from a newspaper article, and shows that it was the Parliament itself that passed the revised Mobilization Law. The government simply put this revised law in operation as the power to do such had been delegated to it by the law itself.^{b.}

HOSHINO's Relation to the Total War Institute.

HO-48. The title of this institute certainly gives the impression that it might have been a research body of considerable importance. However, what was in fact established under this title as all the evidence clearly shows, was a different institution in its objectives and activities. In the submission of the defense, the intention of the government relating to this institute is clearly indicated in the ordinance and the subsequent treatment given to the institute by

HO-46. e. Ibid.

f. Tr. 9,878.

HO-47. a. Tr. 9,842.

b. Ex. 84; page 25.

1 the government. The Ordinance for Organizing the Total
 2 War Research Institute^{a.} provides for its aims that it
 3 shall take charge of the fundamental investigation and
 4 research, and the education and training of officials
 5 concerning the nation's total war effort.

6 The provision puts two things together, namely,
 7 fundamental research and education. Some time after
 8 its establishment, the government decided to allow only
 9 160,000 yen a year for its total expenditures,^{b.} and
 10 without giving any instruction or guidance, it left
 11 everything to what the director thereof would later
 12 decide and carry out.^{c.} Appointment of the director was
 13 delayed very much, and when it eventually began to
 14 operate with its staff and students, it was in April
 15 1941, six months after its establishment.^{d.}

16 HO-49. The staff or faculty of the institute
 17 was very small, consisting of seven persons at the
 18 beginning,^{a.} which number was later increased. However,
 19 as increased it was not more than fifteen, as the
 20 prosecution exhibit 869-AA clearly shows. The average
 21 number of students was about forty in each term, and
 22 each term was for one year.^{b.} The government reduced

24 HO-48. a. Ex. 868-A; Tr. 8817-8.

b. Ex. 3217; Tr. 29,184.

c. Ex. 3030; Tr. 27,067; Tr. 29,184.

d. Ex. 869; page 8.

25 HO-49. a. Ex. 3217; Tr. 29,183.

b. Ex. 869.

1 the number of the staff members at the end of 1942,^{c.}
 2 and again cut it by half in November 1943 in the midst
 3 of the Pacific War.^{d.} The institute ceased to operate
 4 practically from January 1944.^{e.} Exhibit 869-BB shows
 5 that the last term which should have continued on to
 6 March 1944, was cut down half way in December 1943.

7 The personnel of the institute staff was never
 8 permanent, most of them were changing after short service
 9 therein. This was also the case with its directors.
 10 IIMURA, the first director, to which appointment the
 11 prosecution attaches very much importance, remained in
 12 the office only for ten months, leaving there October
 13 1941, and four other directors, of which two being from
 14 the navy, had been appointed in succession within a
 15 very short period.^{f.} Some army and navy officers of
 16 colonel rank were included in the staff membership,
 17 but the number thereof was a few in any one period.^{g.}

18
 19 HO-50. Now, on the activities of the institute,
 20 prosecution witness HORIBA testified that the primary
 21 emphasis placed was upon lectures while table-top
 22 maneuvers, inspection tours and trips were also under-
 23 taken.^{a.} The same witness further stated that the staff

24 HO-49. c. Tr. 29,186.
 25 d. Tr. 32,055-56.
 e. Tr. 29,186.
 f. Ex. 869.
 g. Ex. 869.
 HO-50. a. Tr. 8,878.

1 members occupied the posts of instructors and gave
2 lectures.^{b.} These facts were also established by the
3 list of the lecturers which is prosecution exhibit
4 869-CC.^{c.}

5 Witness OSHIMA, who was one of the staff mem-
6 bers from the beginning, stated that he had also to
7 perform miscellaneous works for the institute.^{d.} From
8 the smallness of the budget for the institute, it is
9 reasonably inferred that all other staff members were
10 also placed in the same position without a sufficient
11 number of clerks to assist them. HORIBA stated that
12 "generally speaking, the institute was so much taken
13 up with training and practice that it was not able to
14 extend its efforts into study and research."^{e.}

15 HO-51. According to exhibit 869-EE and
16 HORIBA's statement,^{a.} the documents owned by the insti-
17 tute are generally divided into two categories; namely,
18 the collections of the studies made by students and
19 those compiled by the institute as materials for re-
20 search and training. Exhibit 688, to which the prose-
21 cution attaches much importance, belongs to the last
22 category. It contains a note on the first page stating

24 HO-50. b. Tr. 8,880.
25 c. Ex. 869, page 12.
d. Ex. 3217; Tr. 29,182-3.
e. Tr. 8,832.
HO-51. a. Tr. 8,832.

1 that they are mere studies carried out by the staff
2 members of the institute, pointing and guiding the
3 general course it should pursue, with the main object
4 of educating the students.^{b.}

5 About the lectures given in the institute,
6 as the prosecution has pointed out (GG-42), lectures
7 were many and subjects chosen by them covered a wide
8 range of matters, spiritual and physical, as well as
9 historical and current. Those subjects were never
10 limited to such as one would commonly consider in
11 relation to total war. Moreover, in our submission,
12 the more were the lectures, the less the time was there
13 devoted by each lecturer; the more the subjects of the
14 lectures varied, the more the information they gave
15 became general and superficial. A glance at the titles
16 of all lectures contained in exhibit 869-CC reveals
17 that what they purported to give was just a fundamental
18 knowledge or general information only.^{c.} HORIBA stated
19 that even about war, the studies were limited to "just
20 the basic things that people should know."^{d.}

22 HO-52. In our submission, the nature of the
23 documents being such, it is entirely out of question
24 that either the institute could have submitted any to

25 HO-51. b. Ex. 3719-A; Tr. 37,048-9.
c. Ex. 869, page 12.
d. Tr. 8,875.

1 the government even for reference purposes or the
2 government could have adopted any as its policy. Of
3 the circumstances under which all the documents owned by
4 the institute came to the custody of the cabinet secre-
5 tariat, HORIBA stated that after the abolition of the
6 institute, they were turned over into the hands of the
7 cabinet.^{a.} Prosecution's witness MURAKAMI also testi-
8 fied to the same effect.^{b.}

9 HO-53. Exhibit 869-DD discloses that from
10 May to November 1941, the students made many tours and
11 trips to various remote districts, spending for that
12 purpose altogether 61 days.. The objectives of these
13 tours, according to the same evidence, was to pay
14 tribute to some shrines or inspect various establish-
15 ments including some village farming. In view of
16 the shortness of the term and great number of days
17 devoted to such tours, it is a reasonable inference
18 that the students did not accomplish much. Of the
19 table-top maneuvers, HORIBA stated that approximately
20 one month's time out of the year (1941) was spent upon
21 them.^{a.} All evidence shows that these maneuvers as
22 well as the lectures of the institute were partly open

24 HO-52. a. Tr. 8,855, 8,870.

b. Tr. 32,055.

25 HO-53. a. Tr. 8,878.

b. As is shown in exhibit 869-BB, there
 1 to the public. was included in each class of students a few students
 2 admitted from the press. Prosecution witness MURAKAMI
 3 stated that these students had access to any materials,
 4 secret or otherwise, used by the students of the insti-
 5 tute.^{c.} HORIBA also testified^{d.} to the same effect.^{c.}

HO-54. In view of all this evidence, it is
 7 suggested that the Court accept the testimonies of
 8 witnesses HORIBA, IIMURA and OSHIMA as a true statement
 9 of the aims and position of the institute. These wit-
 10 nesses all corroborated one another's testimony in
 11 stating that the aim of the Total War Institute was
 12 chiefly to educate and train junior officials and others
 13 with a view to eradicate the evil of sectionalism then
 14 prevalent among government offices and civilian orga-
 15 nizations.^{a.}

HO-55. HOSHINO was made the acting director
 18 of the Total War Research Institute from October 1 to
 19 January 11, 1941.^{a.} However, this appointment was of
 20 a temporary character in order just to fill the post
 21 nominally until the director would be appointed. As
 22 IIMURA was eventually appointed the director on the

HO-53. b. Tr. 8856-8; 27,069.

c. Tr. 32,045.

d. Tr. 8,857.

HO-54. a. Tr. 8847; 29,182; 27,070.

HO-55. a. Ex. 109.

b.
1st of January, HOSHINO was relieved of the post of
acting director. Before the appointment of IIMURA,
the institute did not operate at all for all practical
c.
purposes.

HO-56. Exhibit 869-BB shows that first term
students came in on April 1, 1941, while exhibit 869-E
discloses that all of these compilations of the insti-
tute were done in and after 1941. During the period
of his incumbency, HOSHINO needed not and did not attend
the business concerning the institute.^{a.} Witness OSHIMA
stated that HOSHINO simply told the staff member of
the institute that "he would leave all matters to them";^{b.}
and "he did not visit the institute at all, gave no
orders, no instructions nor suggestions concerning it."^{c.}
In May 1941, HOSHINO was selected by the institute as
one of the councillors which consisted of 15 or 16
persons; the position of councillor was really nominal
and honorary, having no practical work relating to
the institute, and HOSHINO as such gave neither
instructions nor suggestions thereto.^{d.} His councillor-
ship ceased on November 24 of the same year.^{e.}

HO-55. b. Tr. 29,184-5.

c. Tr. 29,184.

HO-56. a. Tr. 29,184.

b. Tr. 29,183.

c. Tr. 29,184.

d. Ibid.

e. Ex. 109, page 6.

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The New Economic Structure

1.
1

2 HO-57. The prosecution stated that the New
3 Economic Structure was intended to effect revolutionary
4 changes in the economic structure in order to promote
5 the completion of armaments, and that the plan provided
6 for a high degree of Government control (GG-33.) The
7 prosecution's own witness, Liebert, showed that this
8 allegation was unfounded when he testified that under
9 this system business largely ran the control associations
10 nominating the directors thereof who were then approved
11 by the Commerce and Industry Ministry.^{a.} This evidence
12 was substantiated by the witness OBATA who testified
13 that, in fact, there was a partial transfer of control
14 of industry and business from government to businessmen
15 so that under the new system there was actually less
16 government control than before. In any event, the Plan-
17 ning Board had nothing to do with how the plan was
18 carried out since this was done by the Commerce and
19 Industry Ministry.^{b.} In this connection, it should be
20 noted that it was only in September, 1941, that is, five
21 months after HOSHINO's resignation, when Major Industries
22 Association Ordinance^{c.} was eventually passed. Under

23 (HO-57. a. T. 8627, 8732.
24 b. T. 29150-51.
25 c. Ex. 2797-A, T. 29164.)

1 the provisions of this Ordinance, the Ministry of
2 Commerce and Industry was vested with the power to carry
3 out the plan for the "New Economic Structure." Exhibit
4 2797-A made it clear that this Ordinance indicated the
5 failure of the plan to introduce a drastic program for
6 state regimentation of industry and transformation of
7 private cartels into public organs directed by govern-
8 ment officials.^{d.}

9 2. The original plan for the "New Economic
10 Structure"^{e.} had been prepared by some of the young
11 officials of the Planning Board in the autumn of 1940,
12 but in settling the draft plan HOSHINO concurred with
13 KOBAYASHI, the Minister of Commerce and Industry, in
14 making important changes therein^{f.} so that it would be
15 more in favor of a laissez-faire economy, protect the
16 small and medium enterprisers rather than force them to
17 combine, prevent their being operated under "one-leader
18 principle," and in general favoring the maintenance of
19 status quo. This was a reversal of the original plan in
20 many points and a check on possible radical changes.^{g.}
21 Assuming as true, for the sake of argument only, the
22 prosecution premise that bureaucratic control of industry
23 constituted planning and preparation for aggressive war,
24

25 (HO-57. d. *ibid.*
e. Ex. 865, p. 41.
f. Ex. 3214, T. 29149.
g. T. 29149, 29150.)

1 the evidence is clear that HOSHINO was opposed to any
2 such scheme.

3 HOSHINO's Resignation in April 1941.

4 HO-58. The prosecution says that the resig-
5 nations of HOSHINO and KOBAYASHI were brought about by
6 the disputes that arose over the plan for the New
7 Economic Structure (GG-42.) But so far as HOSHINO and
8 KOBAYASHI were concerned there were no disputes between
9 them. There is no evidence whatsoever as to any dispute
10 having ever arisen between them. As the prosecution
11 also says (GG-51) and as the evidence clearly shows,
12 HOSHINO did agree with KOBAYASHI on the changes of the
13 economic plan. Witness OBATA stated that the changes
14 were to act as a check on the too great emphasis on a
15 synthetic and planned economy and was a check on possible
16 radical changes.^{a.} This witness further stated that
17 the final plan on which HOSHINO and KOBAYASHI concurred
18 was a reversal of the original plan in many points.^{b.}
19 The original plan had been drafted by the young officials
20 of the Planning Board, and HOSHINO agreed to such
21 material change thereof.^{c.} It can be inferred from this
22 fact that much discontent with HOSHINO would have been
23 caused among the young officials and the supporters of
24

25 (HO-58. a. T. 29149-50.
b. T. 29150.
c. T. 29149.)

reform.

In our submission, the circumstances relating to HOSHINO's resignation are quite clear in KONOYE's Memoire.^{d.} It shows that the economic Ministers. which included HOSHINO, were considered the "weak point;" hence the Cabinet must be reshuffled.^{e.} It was suggested that the Finance Minister also should be changed but it was finally decided that only the Minister of Commerce and Industry and the President of the Planning Board should be changed.^{f.} It was necessary that the President of the Planning Board be a person who knew about the commodity mobilization plan, and the "inner working of the Army and must be a forceful person."^{g.} (Obviously HOSHINO did not meet these requirements.) The successor to the Presidency of the Planning Board was named from the Army.^{h.} Then KONOYE decided that the new Minister of Commerce and Industry should be chosen from the Navy side. These two changes, it was considered, would mark an advance toward the perfection of the national defense structure.^{i.} After the Cabinet's change had been agreed upon HOSHINO was informed by TOJO first,

(HO-58. d. Ex. 3216-A, T. 29169-81.

e. T. 29169.

f. T. 29170.

g. T. 29171-2.

h. Ibid.

i. T. 29174.)

1 later by Prince KONOYE that he must resign.^{j.} KOBAYASHI
2 also consented to resign, expressing that he would not
3 so consent if the choice of his successor had been
4 FUJIWARA^{1.} (a businessman.) The newspapers characterized
5 the reorganization "as a stroke of genius," and ex-
6 pressed approval and placed "great expectations in the
7 future."^{m.} This KONOYE Memoire, it is submitted, is as
8 significant for what it does not say as for what it
9 does say.

10 To any fair observer, this will reveal that
11 HOSHINO was simply considered not to be as forceful as
12 his post required and was replaced by a competent
13 person. There is not a word of anyone's consulting
14 HOSHINO about his resignation, nor of any opinion ex-
15 pressed by HOSHINO when he was told that he had to re-
16 sign. His attitude on resigning, we submit, was a
17 typical example of the attitude that a career civil
18 servant would very often take.

19 Period Between April 14, 1941, and October
20 18, 1941.

21 1.

22 HO-59. HOSHINO resigned from the Second KONOYE
23 Cabinet on April 14, 1941. In the interrogation of

24 (HO-58. j. T. 29178.

25 1. ibid.

m. T. 29179-80.)

1 HOSHINO by the prosecution, he stated that "for a half
 2 year after the resignation, he was doing no special job,
 3 and visiting various parts of the country." ^{a.} These
 4 were mostly private trips to see the condition of the
 5 country as he had been away in Manchuria for a long
 6 period. Witness MURAKAMI, Hajime, who had been his
 7 secretary, and almost always lived with HOSHINO at his
 8 private house at this time testified to the same effect. ^{b.}
 9 Witness INADA stated that ^{c.} HOSHINO told him that all he
 10 had been doing after resigning from the KONOYE Cabinet
 11 in April, 1941, was to travel around Japan. According
 12 to the testimony of MURAKAMI, HOSHINO made only one
 13 courtesy call on the War Minister at his official resi-
 14 dence immediately after his resignation, and since then
 15 HOSHINO had no contact with TOJO at all; his contacts
 16 with the outside world were limited to those with his
 17 intimate friends and a few others for amusement purposes. ^{d.}

18 2. On the evening of 17 October 1941, he was
 19 enjoying a Kabuki play with his family when he came to
 20 know that TOJO had been ordered by the Emperor to form
 21 the Cabinet, ^{e.} and while he still continued seeing the
 22 play he was unexpectedly called out by a loud speaker to
 23 visit TOJO. At this time he was expected to go on a
 24

25 (HO-59. a. T. 29203.
 b. T. 29191.
 c. T. 29199.

d. T. 29190.
 e. T. 29192.)

1 trip to Korea and Northern Kyushu with his friend, and^f
2 the arrangements for the trip had been already completed.
3 The prosecution made a great deal of argument on HOSHINO'
4 activities in this period. But, we submit, these argu-
5 ments are after all only supposition and supported by no
6 evidence. It was quite natural for a career civil
7 servant like HOSHINO to spend such a life of "unemploy-
8 ment to the letter" after his resignation. It was also
9 natural for HOSHINO who had been away from Japan for a
10 number of years to want to travel and look over the
11 conditions of the country. After his resignation in
12 April, HOSHINO was appointed a member of the House of
13 Peers, a Councillor of the Total War Research Institute
14 and a member of the National Mobilization Investigation
15 Committee respectively in April, May and July.^{g.} However,
16 since the Parliament was in adjournment since March to
17 December, 1941, HOSHINO of course had no duty relating
18 thereto, and the position of the Councillorship of the
19 Total War Research Institute was rather nominal and
20 honorary,^{h.} while the membership of the National Mobil-
21 ization Investigation Committee did not require his
22 attendance as the Committee was not meeting. The prose-
23 cution had ample opportunity to challenge the defense
24

25 (HO-59. f. T. 29191.
g. Ex. 109.
h. T. 29184.)

1 evidence concerning these points when it was offered,
2 but they failed to do so.

3 C. HOSHINO as Chief Secretary of the Cabinet
4 from October, 1941, to July, 1941.

5 1.

6 HO-60. On receiving a message from TOJO in
7 the Kabuki Theater, HOSHINO visited him at his official
8 residence late in the evening of October 17, 1941,^{a.} and
9 was requested by TOJO to become Chief Secretary of the
10 Cabinet. This came as a surprise proposal to HOSHINO
11 who had spent a life of leisure for half a year since his
12 resignation in April from the Second KONOYE Cabinet,^{b.}
13 but he accepted it.

14 2. As to the circumstances relating to this
15 unexpected appointment, witness INADA^{c.} testified that
16 about six o'clock in the evening of TOJO's receipt of
17 the mandate to become next Prime Minister, INADA visited
18 TOJO when suddenly requested to do so and was asked for
19 his opinion concerning the choice of a candidate for the
20 post of the Chief Secretary of the Cabinet. According
21 to this witness, TOJO said that he had to select some-
22 one as Chief Secretary, but that he was not familiar
23 with the affairs of civil service. He then asked INADA
24 for his general opinion on the matter.^{d.} TOJO then

25 (HO-60. a. Ex. 3218, T. 29192.

d. T. 29198.

b. T. 29191.

c. T. 29197-8.

showed him a list of a few persons, including HOSHINO
1 and SHIOBARA, Tokisaburo,^{e.} a Bureau Chief in the Welfare
2 Ministry, and asked if the Secretariat could work
3 smoothly under HOSHINO as Chief, to which INADA replied
4 that in view of HOSHINO's experience in official business
5 he would be proper for the post and the Secretariat could
6 work well under him. TOJO stated concerning this choice
7 that "because he needed an assistant, it was necessary
8 for him first to choose the Chief Secretary of the
9 Cabinet" and that "he rang up HOSHINO at half-past eight
10 and asked him to comply with his wishes."^{f.} He went on
11 to say that by "assistant" he meant somebody to make
12 telephone calls for him and to take down notes of what
13 he was saying and so forth.^{g.}

15 1.

16 HO-61. It is submitted that this evidence
17 clearly shows that HOSHINO was chosen by TOJO purely
18 from the consideration of his being fit for the secre-
19 tarial work and not for his political ability. It is
20 quite reasonable to infer that TOJO should have appraised
21 HOSHINO's abilities and inabilities in his experience in
22 the Second KONOYE Cabinet, from which HOSHINO had
23 resigned in disappointment. It is suggested that TOJO

24 (HO-60. e. T. 29203.
25 f. T. 36314.
g. T. 36499-500.)

1 stated his true view of HOSHINO when he said, "HOSHINO
2 having been one of my colleagues in the Second KONOYE
3 Cabinet, I considered him the ideal man for the post of
4 the Chief Secretary both in point of previous career
5 and personal ability."^{a.}

6 2. This inference is more clearly drawn after
7 considering TOJO's testimony concerning his serious and
8 unprejudiced attitude toward the choice of his Cabinet
9 members. TOJO stated that with regard to the formation
10 of a new ministry, "he determined that the choice of
11 each man's personal timber, that is to say, those well
12 versed in several administrative capacities should be
13 assigned suitable posts."^{b.} His consultation with INADA
14 who held the position of Chief of the Secretariat Sec-
15 tion for many years, on the choice of the Chief Secre-
16 tary, is also very significant in this connection. It
17 was unusual for a Prime Minister designate to consult a
18 mere Section Chief on such matters. This extraordinary
19 attitude of TOJO itself shows that he tried his best to
20 make the most unbiased choice possible.

22 3. Assuming for the sake of argument only,
23 that HOSHINO had been in conspiracy with TOJO and TOJO
24 had chosen him for some personal reason as the prose-
25 cution suggests, there would have been no need to make

(HO-61. a. T. 36314.

b. T. 36312-3.)

1 such consultation, of if HOSHINO had been appointed to
2 the post for the sake of his personal influence, he
3 would have been also made a Minister Without Portfolio,
4 as was usually the case when some political activities
5 and influence was expected and desired from a Chief
6 Secretary. In spite of the charges made in the Indict-
7 ment, HOSHINO never was made the Minister Without
8 Portfolio in the TOJO administration, this charge has
9 not been pressed by the prosecution.

10 When HOSHINO was asked how it happened that he
11 became Secretary of the Cabinet, he replied, "There was
12 no special reason except that I had been requested to
13 become the Cabinet Secretary on the 17th by TOJO. At
14 that time I had already purchased a ticket in anticipation
15 of going to Korea."^{c.} In the light of all evidence
16 relating to this matter, it is suggested that the Tri-
17 bunal should accept the above reply of HOSHINO as an
18 honest and clear-cut statement of the circumstances
19 relating to his appointment.
20

21 HO-62. Concerning the policy of the TOJO
22 Cabinet relating to the American-Japanese negotiations,
23 TOJO himself stated that, "As for the clean slate
24 message, I felt it imperative and was firmly resolved
25 that it must be accomplished without fail."^{a.} The

(HO-61. c. T. 29204.
HO-62. a. T. 36311.)

1 witness YAMAMOTO stated that in the Liaison Conference
 2 which opened immediately after the formation of the
 3 TOJO Cabinet, TOJO declared that the new cabinet will
 4 consider the Japan-American negotiations entirely on
 5 a clean slate, freed from the decision on September 6. ^{b.}

6 Duties of Chief Secretary of the Cabinet.

7 HO-63. The duties of the Chief Cabinet
 8 Secretary are defined by the Ordinance. ^{a.} His main
 9 duties were to assist the Prime Minister, take charge
 10 of confidential documents and manage the general affairs
 11 of the Cabinet. ^{b.} The so-called confidential documents
 12 consisted principally of those relating to personnel
 13 matters and those which had been referred to Cabinet
 14 meetings. ^{c.} As to the "general affairs of the Cabinet"
 15 the definition was also given in the Ordinance. ^{d.} As
 16 a glance will show, they are chiefly the secretarial
 17 duties concerning various public documents and seals.

18 As will be clear from these duties, the position
 19 of Chief Secretary of the Cabinet is secretarial as its
 20 name indicates. It is submitted that HOSHINO's duty in
 21 this position is best appreciated by referring to two
 22 instances of which there was evidence in this case. One
 23 related to his visit with Foreign Minister TOGO in the

24 (HO-62. b. T. 33018.

HO-63. a. Ex. 3217, T. 29193

b. T. 29194.

c. T. 29201.

d. T. 29193-4.)

1 matter of the establishment of Greater East Asia
 2 Ministry, ^{e.} while the other was concerned with the
 3 drafting of the Imperial Ordinance declaring war. ^{f.} An
 4 examination of the evidence clearly reveals that in
 5 both instances his was just in a transmittal or
 6 secretarial capacity.

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 25 (HO-63. e. T. 35757-8.
 f. T. 31048.)

HO-64. Generally speaking, the scope of the assistance that the Chief Secretary should give to the Prime Minister is limited to the affairs which come directly under the jurisdiction of the Prime Minister. In other words, it has nothing to do with military matters nor with such matters that fall under the direct control of each department of the Government. HOSHINO's duties as Chief Secretary, of course, were subject to the above limitations, both legally and practically. TOJO had four private secretaries,^a of whom two were Col. AKAMATSU^{b.} and a Navy Captain. According to the Ordinance, they were to take charge of secret business under the directions^{c.} of the Prime Minister.

As to HOSHINO's relation to the military and foreign affairs, TOJO stated, "that both by his nature and as a matter of policy, on all important matters concerning foreign affairs I consulted the Foreign Minister, and as for military affairs, I did not allow HOSHINO to interfere."^{d.} HOSHINO also stated that, "I have not been asked for any advice by TOJO previous to the war, nor have I given any. I have

HO-64. a. T. 29,202
 " b. T. 29,198
 " c. Ex. 3219; T. 29,195
 " d. T. 36,503

just carried out instructions as a secretary." ^{e.}

HO-65. As Chief Cabinet Secretary,
HOSHINO sat in on the cabinet meetings together with
Chiefs of the Legislative and Information Boards.
He had no right to a vote, ^{a.} nor did he actually
vote. He attended some of the Privy Council meetings
when requested, however, as one of many explainers
who were merely to explain when called upon with the
approval of the President. ^{b.} He was not, of course,
a member thereof and not permitted to express anything. ^{c.}

As is clear from the evidence, HOSHINO in
fact did not speak anything in any of the Privy
Council Meetings held in this period. Concerning
the Privy Council Meetings held in connection with
the organization of the Greater East Asia Ministry,
he only sat in on three meetings but he was absent
from all important meetings subsequently held on the
same subject. It is submitted that this shows that
his position was unimportant in such meetings.

Concerning the various appointments which
HOSHINO held after October 1941, (GG-61), these were
rather nominal positions to be held ex-officio or

- HO-64. e. Ex. 3212-A; T. 29,206
- HO-65. a. Ex. 2212-A; T. 29,205
- " b. Ex. 3213; T. 29,234
- " c. Ex. 3212-A; T. 29,206

otherwise as Chief Secretary of the Cabinet. The
1 prosecution fails to prove any activities HOSHINO
2 had in relation thereto.

3 HOSHINO's name appears in the list of those
4 who attended the assembly of East Asiatic Nations.^{d.}
5 But none of his activities, if any, therein was ever
6 shown.

7 HOSHINO's Relation to Liaison and Imperial
8 Conference

9
10 HO-66. Concerning the position of HOSHINO
11 as Chief Cabinet Secretary in the Liaison or Imperial
12 Conference, much evidence has made it clear that he
13 merely attended such conference as one of the three
14 secretaries, and he could neither voice his opinion
15 nor vote in it.^{a.} The secretary took charge of the
16 clerical work in the Conference;^{b.} namely, the
17 preparation, explanation and adjustment of the drafts,
18 etc. By preparation of the drafts it was meant only
19 to prepare for submitting the drafts which had been
20 duly studied and written by proper authorities. If
21 the draft was on military matters, the proper
22 authorities in the Army or Navy or Supreme Command
23 respectively wrote it while on diplomatic matters,
24

25 HO-65. d. Ex. 1346; T. 12,098

HO-66. a. Ex. 3444; T. 33,018; T. 36,497-8

" b. T. 33,017

Foreign Office authorities took charge of the
writing.^{c.} Prosecution exhibit 1175, we submit, is
very important in this connection. According to
witness HARA,^{d.} the document was nothing but a draft
for study prepared by the officials of the five
authorities concerned in regard to the fundamental
reasons relative to the opening of hostilities. These
five authorities were officials representing the two
General Staffs, War and Navy Ministers, and the
Foreign Office. This witness testified that five
copies were made of this draft and distributed among
the officials. This shows that the Cabinet Secretariat
did not participate in the making of the draft nor
receive its distribution. Some of the drafts of a
similar nature are in evidence but none of them has
any connection with HOSHINO.

HO-67. The prosecution in their attempt
to prove HOSHINO's activities in some of the Liaison
Conferences used an interrogation of TOGO that was
made under peculiar circumstances.

We objected to the use of the statements
made by TOGO on the ground that it came under the
general rules as expressed in the Tribunal's ruling

HO-66. c. ibid
" d. T. 34,452-3

1 that it would receive the statements by an accused
2 only against the accused making them and not against
3 the other accused.^{a.} Mr. Higgins also declared that
4 the prosecution would not insist that there should
5 be any relaxation or broadening of these general rules
6 in this case.^{b.}

7 TOGO's statements in question were made by
8 him in response to the interrogation by Mr. Morgan
9 on March 8, 1946.^{c.} At this time TOGO was still
10 remaining at home, while most of the accused including
11 HOSHINO had been confined in Sugamo Prison.

12 It is true that such interrogation was
13 offered in a cross-examination of TOGO. This probably
14 was the reason why the Tribunal receive it over the
15 objection by the defense. However, it was placed in
16 evidence by confronting TOGO with his interrogation
17 and in effect daring him to deny it on the penalty of
18 being proven to be that which they had already accused
19 him of being, a user of "weasley words".

20 We submit that such evidence is worthless
21 and should not be given any consideration whatsoever.

22 HO-68. On the activities of the secretary
23 in the Liaison or Imperial Conference, TOJO stated
24

25 HO-67. a. T. 16,106
" b. T. 16,105
" c. T. 36,083

that the secretary did not participate in the
 1 discussions,^{a.} and he did not allow the secretary
 2 to voice his opinion in such Conferences.^{b.} He
 3 further stated that HOSHINO privately told him, ex-
 4 pressing his joy,^{c.} "Now that plans A and B have
 5 been decided on, the American-Japanese negotiations
 6 will probably go very smoothly."

HO-69. In this connection, the evidence
 8 concerning the preparation for the Imperial Decree
 9 for peace is very significant as showing HOSHINO's
 10 real position and attitude toward the American-Japanese
 11 negotiations. Witness INADA testified^{a.} that toward
 12 the end of November, HOSHINO handed him a memorandum
 13 entitled "Measures to be taken in case Japan should
 14 suffer great hardship", and the first item of its
 15 contents reads, 'Request the Emperor to proclaim
 16 Imperial Decree--Settle the people's minds and
 17 retention of the National Power'. According to this
 18 witness,^{b.} HOSHINO ordered him to draft this decree
 19 together with the decree for the Declaration of War,
 20 which had been ordered to be prepared by the Prime
 21 Minister.^{c.}

23 HO-68. a. T. 36,497
 24 " b. T. 36,500-1
 " c. T. 36,501
 25 HO-69. a. T. 29,199-200 b. T. 29,199
 " c. Ex. 3,655; T. 36,405

1 The drafting of an Imperial Decree concerning State
 2 Affairs is one of the prescribed duties^{d.} of the
 3 Cabinet Secretariat both by Ordinance and custom,
 4 and the drafting means to perform all clerical
 5 work, including the arrangement in a customary form
 6 of letters and phrases of the contents as desired by
 7 proper authorities concerned. INADA accordingly
 8 drafted the Rescript for Peace, the general purport
 9 of which was that "Japan would be put in a very
 10 difficult position but that the Japanese people should
 11 endeavor to maintain the national strength and keep
 12 friendly relations with other nations of the world".^{e.}
 13 HOSHINO perused the rough draft and returned it to
 14 INADA for reconsideration. However, eventually the
 15 draft was cast aside as the situation took the last
 16 turn toward the war.
 17

18 HO-70. The evidence shows that there was
 19 still slight hope left for the peaceful settlement
 20 of the American-Japanese negotiations.^{f.} The evidence
 21 presented by TOJO also shows that even in October it
 22 was felt extremely difficult to avoid internal confusion
 23 in case American-Japanese negotiations should come to
 24 a peaceful settlement.^{b.}
 25

HO-69. d. T. 29,199

" e. T. 29,200

HO-70. a. Ex. 3646; T. 35,712-3

" b. Ex. 3665; T. 36,312

1 In our submission, the fact that HOSHINO ordered a
2 decree for peace to be drafted under such circumstances
3 shows that he expected that the peaceful termination
4 of the negotiations might come even at the last moment
5 and he intended to prepare for the eventuality in
6 which he might be suddenly requested to draft a decree.

7 HOSHINO' Relation to Alleged Atrocities

8 HO-71. All the evidence, we submit, has made
9 it clear that HOSHINO as a Chief Secretary of Cabinet
10 had nothing to do with the alleged atrocities. As
11 to the protests from Foreign Powers relating to
12 this matter, the evidence has also made it clear that
13 it has been dealt with exclusively by the Foreign
14 Office and the War and Navy Ministries according to
15 their respective jurisdictions. Such matters have
16 never come to the notice of HOSHINO.^{a.}

17 HO-72. In conclusion, we submit that the
18 prosecution has wholly failed to prove their case
19 against HOSHINO. Their evidence shows only that
20 HOSHINO has held a few positions in the Government
21 and in that capacity performed some official acts.
22 However, we have shown that all such acts of HOSHINO
23 were discharged by him purely as his duties to the
24 Governments in which service he then was, and he did
25 HO-71. a. T. 35,251; Ex. 3337; T. 30,658

1 them in his effort to carry out his duties faithfully
2 to the Governments and their people; namely, his
3 conduct throughout was what any civil official might
4 reasonably be expected to do, if he had been placed
5 in that position under the same circumstances.

6 We have shown also that HOSHINO has never
7 been in a "policy-making" position. It is true that
8 he was the Minister Without Portfolio in the Second
9 KONOYE Cabinet from July 1940 to April 1941. However,
10 there has been no evidence showing his activities as
11 such except that he signed one Imperial Decree together
12 with and at the last of all other Cabinet members.
13 Evidence has also disclosed that he had to resign from
14 this post as he was deemed incompetent. We submit
15 that he has not violated any law of the Charter nor
16 any international law and should be found "not guilty".
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THE PRESIDENT: Mr. Cole.

1 MR. COLE: May it please the Tribunal, I am
2 proceeding somewhat sooner than I had expected, as the
3 result of which I have not been able to check my draft
4 as much as I would like to. I should like to request
5 the permission of the Tribunal to file later an
6 errata sheet if it becomes necessary.

7 THE PRESIDENT: You may make any corrections
8 you desire.

9 MR. COLE: I beg your Honor's pardon.

10 THE PRESIDENT: You may make corrections.

11 MR. COLE: May it please the Tribunal, on
12 behalf of General MUTO I address your Honors in what
13 I choose to consider the proudest assignment of my
14 professional life.

15
16 2. It is my conviction that if ever I was
17 privileged to represent a man completely innocent of
18 all the charges leveled at him, that man is the one
19 for whom I make this plea today. On his behalf I
20 subscribe to the general arguments which have been
21 made in the interest of all the accused. Those argu-
22 ments, in my submission, should be sufficient to
23 require the acquittal of all these accused, in view
24 of the novel and often preposterous charges under the
25 Indictment, and the failure of the prosecution to

1 prove those charges, even under the uniquely liberal
2 rules which govern the deliberations of this Tribunal.
3 But in this summation I confine myself to a consider-
4 ation of the evidence adduced against MUTO, and of
5 its total disproof so far as any guilt is concerned.

6 3. It is redundant to observe that this
7 trial is unparalleled in the history of jurisprudence.
8 That observation has been made innumerable times dur-
9 ing the course of the past two years. But, under-
10 lying all that we have done here, there is the basic
11 and persistent realization that in this courtroom
12 twenty-five men are on trial for their lives. That
13 stark fact is, to my mind, the ultimate one to con-
14 sider.

15 4. For the purpose of setting the tone and
16 main theme of this plea, I should like at the outset
17 to quote your Honor, the President, and to make an
18 observation of my own. Your Honor observed^{a.} "MUTO
19 has been represented to us as a mere public servant
20 or soldier." I replied to that, "I agree with that
21 perfectly, sir. In fact, we contend that."

22 5. The observation of my own which I wish
23 to make in setting the direction of this summation is
24 one that I have made so often that a reference to the
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4.
a. Tr. 37857.

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4.
a. Tr. 37857.

transcript seems unnecessary. That is, that during
1 the entire course of this trial MUTO has never once
2 been shown to have done one thing which could not
3 have properly been done by any military man of com-
4 parable rank in any country in the world. In the
5 clear light of reality, some of which has become much
6 more clear throughout the world since this trial
7 began and is daily becoming more clear, that claim
8 cannot be and has not been effectively disputed.
9

6. In the presentation of our individual
10 defense case, we considered the prosecution's evidence
11 against MUTO under four main headings: China, the
12 Military Affairs Bureau, Sumatra, and the Philippines.
13 The prosecution's summation against him makes it
14 quite clear that they now attempt to put the greatest
15 blame on him for his tenure of office as Chief of the
16 Military Affairs Bureau. In fact, it is attempted
17 to make his actions during that period responsible
18 for everything that followed the outbreak of war and
19 a great deal of that which preceded it. It appears
20 to be an attempt to make that period of his career a
21 catch-all for other charges which they must realize
22 have not been proved. And in view of the tremendous
23 emphasis which was put on the alleged misdeeds and
24 atrocities in Manila in the prosecution's case in
25

1 chief, I submit to the Tribunal that it is indeed
2 strange that not one question was asked him on cross-
3 examination as to this seemingly important phase of
4 their case against him.

5 7. We intend, for the above-stated reasons,
6 to go into considerable detail about the Military
7 Affairs Bureau period, and, in addition, to demonstrate
8 how all other charges against him have been disproved.
9 Before going into those particular matters, however,
10 we ask the Tribunal to consider the testimony of
11 TANAKA, Ryukichi, upon whom the prosecution has put
12 the heaviest reliance in their case against MUTO. As
13 was so aptly stated by another defense counsel,
14 TANAKA is "the one professional witness to emerge in
15 this trial."^a.

16 8. TANAKA appeared here so many times that
17 he truly can be called the perennial witness of this
18 trial. He testified glibly and often on a great
19 variety of matters. He acknowledged good friends sit-
20 ting in the dock, and then proceeded, with what seemed
21 eagerness, to do his best to convict them. He appeared
22 as a "happy and smiling warrior," but the key to all
23 of TANAKA's testimony is that he is an exceedingly
24 unhappy warrior -- a man of intelligence, but of
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a. Tr. 34378.

1 jealousy and consuming ambition, who had natural
2 aspirations for promotion and recognition, who left
3 the Army because of illness, and who could not bear
4 the fact that another man was appointed to the
5 position he aspired to. As a result, he has a cold
6 hatred for MUTO whose position he wanted, and for
7 SATO, who received the assignment. That is the key
8 to all of TANAKA's testimony against those two
9 accused.

10 9. We have presented to the Tribunal sound
11 evidence against every damaging claim of TANAKA
12 as far as MUTO is concerned. A comparison between
13 his testimony and that offered by the defense will
14 show convincingly the right and wrong in each case;
15 it will show clearly which testimony is based on
16 truth and common sense, and which on a desire for
17 vengeance. His testimony alone demonstrates that
18 fact. On 21 January 1947, as he was quoted in the
19 prosecution's summation,^{a.} concerning the relationship
20 between MUTO and TOJO, he stated, "In reality the Army
21 was the driving force in Japan, and, as a matter of
22 fact, almost all of the policies of the Army were
23 evolved from the brilliant mind of this same General
24 MUTO as Chief of the Military Affairs Bureau."^{b.}
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a. 00-4.

b. Tr. 15863.

1 At the time, the President observed, "I don't suppose
2 you expected answers just in that terminology. That
3 is outside his province as a witness."^c On the very
4 next day, on being hard pressed on cross-examination,
5 TANAKA admitted that the above was merely his subjec-
6 tive view and was not based on facts.^d

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24 9.
25 c. Tr. 15864.
d. Tr. 15900.

10. On two different occasions before this
1 Tribunal TANAKA claimed that he had no ambition to be-
2 come Chief of the Military Affairs Bureau and that he
3 never dreamed of getting that position.^a Yet he claimed
4 that that position carried more influence and power
5 than that of the Military Service Bureau, whose chief
6 he was; in fact, he claimed that it was one of the
7 most influential positions within the government.^b
8 On cross-examination TANAKA acknowledged that his sub-
9 ordinates and followers wished for him to become head
10 of the Military Affairs Bureau. He also acknowledged
11 that he was aware of public comment that he wanted to
12 see MUTO's fall because of his, TANAKA's, failure to
13 get that position.^c All his denials as to any ambi-
14 tions for that office become completely incredible; he
15 was a professional military man until his resignation,
16 he was personable and ambitious, and to salve his
17 wounded ambitions he turns with smiling glibness on his
18 former friends and associates, for reasons which are
19 quite obvious.
20

21 11. On 8 July 1946, in the early stage of
22 the prosecution's case in chief, TANAKA testified that
23 he had been informed of the progress of the Japanese-
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25 10. a. Tr. 14,363, 15,915
b. Tr. 14,285-6
c. Tr. 15,916-7

American negotiations by Vice Minister of War KIMURA

1 and the then Chief of the Military Affairs Bureau SATO,

2 but he never claimed to have heard anything about it

3 from MUTO.^a But on 22 January 1947 he testified that

4 MUTO had talked with him about that subject.^b He also

5 testified that Vice Minister KIMURA told him that

6 "not on one occasion alone, that if Ambassador KURUSU went

7 to the United States a settlement could be reached be-

8 tween the two countries."^c Yet he declared in later

9 testimony that he had been told that the sending of

10 Ambassador KURUSU to the United States was a camouflage.^d

11 His testimony becomes completely willful, changeable,

12 unpredictable, and adapted to the needs of the moment.

13 It discredits him by his own words, even without the

14 consideration of the motives behind his attitude.

15
16 12. Now as to the particulars of the indict-
17 ment and proof. MUTO has been indicted on all counts
18 except 18, 25, 35, 48, 49, 50 and 52. The evidence
19 which has been presented completely refutes those charges.

20 The prosecution has strained at every possibility to
21 prove the charges, but they have not proved one single
22 criminal act committed by him. They have indulged in
23 conjecture and surmise and innuendo, attempting to

24 11. a. Tr. 2050-1

25 b. Tr. 15,871

c. Tr. 2051

d. Tr. 15,871

1 suggest that because of his position and his admitted
2 attendance at many conferences he must have had a power-
3 ful and sinister influence. We submit that it is not
4 a crime to be intelligent and efficient. MUTO was both.
5 So are the top men, military or otherwise, in any country
6 represented here. But it is indeed strange that the
7 prosecution, for all its claims as to his actions in
8 these so-called all-important conferences, has been
9 unable or unwilling to show to this Tribunal one single
10 quotation of his, in such conferences, by which to bear
11 out their contention.

12 13. Further, on the unreliability and paucity
13 of the prosecution's evidence, we respectfully call atten-
14 tion to the record as to MUTO's speech before a committee
15 of the Diet, which was supposed, by the prosecution's
16 questions, to have been accepted in responsible circles
17 as a ringing advocacy for the dissolution of all politi-
18 cal parties.^a The prosecution presented only a news-
19 paper article discussing that speech, whereas we present-
20 ed, most willingly, the actual minutes.^b This is one
21 more example of the indifference of the prosecution as
22 to presenting the true and complete facts, of which
23 more can be said later. If we can produce the actual
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25 13. a. 00-22-5; ex. 2243-A, tr. 16,150

b. Ex. 3440, tr. 32,966-73

stenographic record of such a meeting, the prosecution
1 could have done the same instead of relying on a news-
2 paper article that was obviously editorialized.

3 THE PRESIDENT: We will recess for fifteen
4 minutes.

5 (Whereupon, at 1045, a recess was
6 taken until 1100, after which the proceed-
7 ings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Cole.

4 MR. COLE: May it please the Tribunal, I
5 continue reading at page 9, Big Sub-Section I, para-
6 graph 14. (Reading):

7 I. CHINA AND MANCHURIA

8 14. We repeat that the prosecution's evidence
9 falls into four phases, so far as MUTO is concerned:
10 China and Manchuria, the Military Affairs Bureau,
11 Sumatra, and the Philippines. He is not indicted
12 for the initiation of the Manchurian Incident, but in
13 Count 19 he is mentioned as one of those responsible
14 for starting the war against China. With regard to
15 this, the prosecution points out that at the time of
16 the Mukden Incident, 18 September 1931, he was a
17 junior officer, a major attached to the General Staff
18 Office; in 1936-7 he became a staff member of the
19 Kwantung Army as a Lieutenant Colonel, and that in
20 March 1937 he was appointed Chief of the 2nd Section
21 of the General Staff in charge of operations and
22 organization.^a From that it is concluded that he had
23 responsibility for the operations against North China
24 in July 1937.^b It also shows, as if it were a grave
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14. a. Tr. 16,872.

b. 00-9

1 offense, that he was decorated in 1940 for his merit-
2 orious services from 1931-4 and again in connection
3 with the China Incident in 1934.^c But what, in reality,
4 does it prove to show that he was a junior officer at
5 the time of the incident in question? The prosecution
6 is playing on a term that has been used carelessly
7 and quite indiscriminately throughout this trial to
8 show a conspiracy that can not be proved. If by
9 "seinen-shoko" is meant those lawless young officers
10 who were prone to disregard discipline and who planned
11 and carried out political manipulations, it is quite
12 clear that MUTO not only did not belong to such a
13 group, but that in the 26 February Incident he barely
14 escaped bodily harm or death at the hands of that group
15 and that he made every effort to correct the trouble
16 they had caused.^d This is from MUTO's affidavit,
17 but completely uncontradicted.

18 15. It is unrealistic and absurd to contend
19 that, because he was a junior officer on the staff of
20 the Kwantung Army, he was taking part in a conspiracy
21 or responsible for what may have happened. The same
22 applies to the matter of decoration for meritorious
23 services. It is a known fact that such decorations are
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25 14. c. Pros. Sum. 00-1, 8, 9, 18
d. Ex. 3454, T. 33,084

are given in quite a routine manner, in any army.^a

1 16. In the above respects the prosecution
2 has been able to produce nothing to show criminality
3 of any kind or degree. On the contrary, the defense
4 has given a forthright account of all matters which
5 the prosecution raised. MUTO himself, in his affidavit,
6 covered every point on which he is accused, but neither
7 on cross-examination nor otherwise has there been a
8 successful effort to disprove his testimony.
9

10 17. As shown by our evidence, at the outbreak
11 of the Manchurian Incident MUTO was a major and member
12 of the line-of-communications staff of the Army General
13 Staff. He was engaged in the compilation of regula-
14 tions on communication and transport. That continued
15 up to March of the following year.^a After that he
16 was assigned to a regiment in Tokyo and then to the
17 Military Administration Section of the Military Affairs
18 Bureau (from March 1935 to June 1936) and then to the
19 staff of the Kwantung Army (from June 1936 to March
20 1937). And in March 1937, when the China Incident broke
21 out, he was transferred to the office of the General
22 Staff. But he had no part in plans for operations
23 against China. Such plans, if any, were made before
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25 15. a. Ex. 3147, T. 28,026-33

 17. a. Ex. 3454, T. 33,082

1 he came to the General Staff Office. And those plans,
2 instead of aiming at an attack on China, consisted in
3 the dispatch of some troops for the mere purpose of
4 giving protection to Japanese residents in North and
5 Central China. Because of the outbreak of the Incident,
6 revisions in plans were necessary, and MUTO was ordered
7 by his superiors to make a study of such revisions.
8 However, in October of the same year he was ordered to
9 go on an inspection tour of the Shanghai area and
10 remained there, without returning to Tokyo, in conse-
11 quence of being appointed Deputy Chief of Staff to
12 General MATSUI.^b Here again we respectfully direct
13 the Tribunal's attention to the fact that never, through-
14 out MUTO's professional career as a military man, did
15 he have an assignment which carried command responsib-
16 ility, except for the period in Sumatra, during which
17 period he is entirely blameless, as the record dis-
18 closes. We refer to this period later. In light of
19 the above, there can be no question that he was in no
20 responsible position with regard to the initiation of
21 either the China Incident or the Manchurian Incident,
22 and such accusations are in every respect groundless.

23
24 18. In Count 45, MUTO is charged with respons-
25 ibility for the attack on the city of Nanking, and for

the murdering of large numbers of civilians and dis-
 armed soldiers. The evidence fails utterly to show
 any responsibility on his part for such a claim. At
 the time, MUTO was a colonel and deputy chief of staff
 of the Central China Area Army. His duties consisted
 in playing an intermediary role with regard to supply
 of necessary personnel, food, arms and ammunition, and
 he had no power to make independent decisions.^a

19. It is also important to note that the
 Central China Area Army Headquarters was a purely
 strategic organ, and that it did not have a legal
 section up to the time of the attack on and fall of
 the city of Nanking.^a From a legal point of view,
 it was the duty of the Shanghai Expeditionary Force and
 the 10th Army, both of which had legal sections, to
 maintain discipline and morality among the troops and
 to impose penalties in case of violations. MUTO, as a
 Deputy Chief of Staff, had neither the authority nor
 the duty to interfere in such cases.^b Surely this is
 sufficient to account for his lack of responsibility as
 to the prosecution's allegations.

20. Also, the evidence further shows that
 MUTO personally took no part in the attack on Nanking,

18. a. Ex. 3462, T. 33,283; Ex. 3454, T. 33,090

19. a. Ex. 2577, T. 21,912

b. Ex. 2577, T. 21,912-3; 21,914-5;
 Ex. 3454, T. 33086-7; Ex. 3498, T. 33,819-20

owing to the illness of General MATSUI, whom he was
 attending;^a that it was on the entry ceremony on
 17 December that he entered Nanking and that he
 stayed there for only four or five days;^b that during
 his stay there he devoted himself to an investigation
 of the camping and billeting facilities outside the
 city of Nanking; that he always called the attention
 of the staff officer in charge to the need for pro-
 tection of interests of foreign nationals; that he
 made efforts to remove from the city the troops which
 had entered contrary to General MATSUI's orders;^c
 and that he arranged to include on the staff Major
 NAKAYAMA, for the particular reason that NAKAYAMA had
 studied in the United States and China and could cap-
 ably attend to relations with foreign nationals and
 best make liaison with them and protect their interests.^d
 These contentions remain entirely undisputed by the
 prosecution and must, therefore, in all fairness, be
 known to be true. All the evidence as to Nanking,
 regarding MUTO, has gone undisputed, and it shows that
 he not only had no responsibility for the operation,

20. a. Ex. 3454, T. 33,088; T. 21,899
 b. T. 21,911-2
 c. Ex. 3454, T. 33,090; T. 21,915-6;
 T. 21,444-6
 d. T. 21,915-6; T. 21,464; E. 3454,
 T. 33,088-91

1 but that he merely performed his duties in regard to
2 supply and billeting.

3 21. MUTO was indicted for the Khalkin-Gol
4 River Affair, during the summer of 1939 under Counts
5 26, 36 and 51; but this charge also proves to be ground-
6 less. MUTO served as Deputy Chief of Staff to the
7 North China Area Army from July 1938 to January 1939.^a
8 The incident occurred during this period, and the
9 units which took part in the operation were entirely
10 independent of the North China Area Army.^b Thus, he
11 could have had no connection whatever with that
12 incident.

13 22. The same must apply to counts 46 and 47.
14 The first of these refers to the attack on the city of
15 Canton on 21 October 1938, and charges MUTO with
16 responsibility for it. But the attack on Canton was
17 carried out by units completely separate from the North
18 China Area Army to which he was attached.^a Likewise,
19 the attack on the city of Hankow, around 27 October 1938,
20 under Count 47, was not executed by the North China Area
21 Army in which MUTO was then serving.^b There can be no
22 dispute on these points, and they serve to show the
23

24 21. a. Ex. 3454, T. 33,091
b. Ex. 3454, T. 33,092

25 22. a. Ex. 3454, T. 33,092
b. T. 33,092

blanket charges of the prosecution and the complete
1 failure to prove and document their allegations.

2 23. Thus far, we have disproved the prosec-
3 ution's charges against MUTO under Counts 19, 26, 36,
4 45, 46, 47 and 51. From the beginning he has not been
5 charged under Counts 18, 25, 35, 48, 49, 50 and 52.
6 The prosecution would try to hold him responsible for
7 the alleged atrocities in North China which are supposed
8 to have taken place while he was a vice-chief of staff
9 for the North China Area Army.^a In this connection
10 we make the same point as in regard to the Nanking
11 Incident: the vice-chief of staff was in no way respons-
12 ible for the maintenance of military discipline.^b The
13 prosecution has never produced evidence to connect
14 MUTO with these matters because it is impossible to
15 do so.

17 II. THE MILITARY AFFAIRS BUREAU

18 24. Regarding the Military Affairs Bureau,
19 MUTO was appointed Director in October 1939 and remained
20 there until he was transferred to Sumatra as commander
21 of the Imperial Guard Division, soon after the outbreak
22 of the Pacific War. The prosecution tries to picture
23 him as a sinister policy-maker, due to the duties he
24

25 23. a. 00-107

b. Ex. 3462, Art. 13, T. 33,283;
Ex. 3454, T. 33,090;
Ex. 2577, T. 21,912-5

carried out as Director during this period. Most of
1 the charges made in Counts 1-34, the so-called crimes
2 against peace, Counts 37-44 -- the prosecution avoided
3 discussion of Counts 37 and 38 in their summation --
4 and in Counts 53-55, the charges as to conventional
5 war crimes and crimes against humanity, relate to the
6 activities of MUTO as Director of the Military Affairs
7 Bureau. These charges prove to be groundless, as can
8 be demonstrated.

9
10 25. We consider first the underlying charge
11 that MUTO took part in a conspiracy. In the first
12 place, we strongly deny the existence of a conspiracy.
13 During the defense's presentation in both the general
14 and individual cases, it has been made clear that there
15 never existed, as charged, any conspiracy to dominate,
16 in conjunction with Germany and Italy, the Orient,
17 Pacific and Indian Oceans and all the adjacent islands
18 by waging an aggressive war against any powers which
19 might oppose it. We do not argue this point, as it
20 has already been fully covered. We merely point out
21 that MUTO had no part in any such alleged conspiracy.

22 26. First, it surely has not been proven
23 that he ever embraced any intention of joining in a
24 conspiracy. Existence of a joint cause or intention
25 simply remains a bald charge under the Indictment,

1 completely without substantiation, and there has been
2 no evidence whatever to show that such a joint intent
3 ever existed, and ample evidence to show that it did
4 not exist.

5 27. There is an assertion that MUTO, as a
6 member of the so-called Secret Liaison Committee with
7 the Five Ministers' Conference, concerned himself with
8 the exploitation of China and its people and that he
9 must have participated in the establishment of the
10 Wang Ching-wei Government, or in the conclusion of a
11 treaty with that government.^a On cross-examination
12 an attempt was made to force MUTO to admit to having
13 been a member of the so-called Secret Liaison Committee,
14 but his answer was that he did not know of such things
15 as the Five Ministers' Conference and the Secret
16 Liaison Committee. That that was a true and correct
17 answer is shown from the passage, "The committee is
18 dissolved upon the establishment of the Chinese Board,
19 (Tai-shi-in)" found at the end of the document shown to
20 MUTO and presented in the prosecution's rebuttal
21 evidence.^b At the time of his assumption of office
22 as Chief of the Military Affairs Bureau, neither the
23 Five Ministers' Conference nor its Liaison Committee
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25 27. a. 00-15

b. Ex. 3457, T. 33,202; T. 37,365

1 existed any longer. This point was clarified by
2 the prosecution's summation against OKA.^c
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27. c. Summation re OKA, PP-31

1 28. MUTO was on the "Committee for Liaison
2 with the Asiatic Renovation Board (Ko-A-In).^a This
3 was never called a secret committee, as is clearly
4 shown in MUTO's personal history.^b As to the scope
5 and duties of that committee, the prosecution evidence
6 shows nothing. The duty of the Liaison Committee
7 that had co-existed with the Five Ministers' Confer-
8 ence consisted, as was stated by the prosecution, in
9 study and investigation, and it had no authority
10 whatever.

11 29. Here we invite the special attention of
12 the Tribunal to the fact that when MUTO became head
13 of the Military Affairs Bureau the basic Chinese
14 policy of the First KONOYE Cabinet had already been
15 definitely established.^a After his assumption of
16 that post, no conferences of special importance were
17 held. To charge him, from the simple fact of his
18 having been a member of the Liaison Committee of the
19 Asiatic Renovation Board, (Ko-A-In) with active
20 participation in exploitation of China is not only
21 false, but demonstrates the lack of convincing
22 evidence against him.

23 28. a. Ex. 3459, Tr. 33,203

24 b. Ex. 118, Tr. 742

25 29. a. 00-10

1 30. Moreover, it is charged that the Military
2 Affairs Bureau was represented on the committee
3 of the Five Ministers' Conference by the bureau chief,
4 the Chief of the Military Affairs Section and one more
5 person as managing secretary, giving the impression
6 that there were three representatives.^a This is
7 another inaccurate statement. The fact is that the
8 section chief himself acted concurrently as managing
9 secretary. The prosecution's statement gives the
10 impression that the Military Affairs Bureau alone was
11 represented by three members. Actually there were
12 only two; further, both the East Asia Bureau of the
13 Foreign Office and the Financial Management Bureau^b
14 of the Finance Ministry were similarly represented.
15 The claim is another case of careless exaggeration.

16 31. We submit that the prosecution has produced
17 no evidence of MUTO's alleged participation in
18 the establishment of the Wang Government nor of the
19 conclusion of a treaty with it.

20 32. The prosecution has submitted^a that
21 MUTO, together with Admiral OKA, deliberated on the
22 fundamental terms for settlement of the China Incident,
23 at the official residence of the Foreign Minister on
24

25 30. a. 00-14

b. Ex. 3457, Tr. 33,202; 37,365

32. a. 00-16, 17

6 September 1941;^b that the terms were included in Japan's terms of peace with China handed to Ambassador Grew later on;^c and that Japan insisted on them up to the last stage of the Japanese-American negotiations.^d It is true that MUTO participated in the conference of the Foreign Ministry, as was his proper duty as liaison officer between the War and Foreign Ministries. But the document itself discloses that it was not drafted by MUTO and OKA, but was prepared as a result of a conference of the Foreign Ministry itself.^e Moreover, it is erroneous to claim that Japan insisted on it to the bitter end. The TOJO Cabinet made step-by-step concessions, as testified to by ISHII, Akiho.^f

33. It is claimed by the prosecution that the terms included the stationing of troops on Hainan Island, where no threat of Communism existed; and that the Japanese forces availed themselves of Hainan as a jumping-off base on 8 December 1941. But it must be noted that the stationing of troops was aimed at joint defense, not merely against Communism, in view

32. b. Ex. 3456, Tr. 33,192
c. Ex. 1245, Tr. 10,792-5
d. OO-16, 17
e. Ex. 3456, Tr. 33,192
f. Ex. 3480, Tr. 33,674

of the annexed note.^a Further, the occupation of Hainan was carried out in March 1939, prior to MUTO's appointment as Chief of the Military Affairs Bureau.^b Hence it is clear that he cannot have any responsibility for it.

34. In view of the above-mentioned errors and misconceptions in the prosecution's case, we wish to demonstrate the kind of opinion MUTO entertained in regard to the Chinese question. First, the Tribunal will recall the testimony of Major General Piggott of Great Britain, who came in contact with MUTO at the Japanese-British negotiations in 1938 and 1939. He testified to the effect that MUTO was instrumental, under General HATA's orders, in affecting a noticeable improvement in Anglo-Japanese relations; that he wished to see a speedy and successful outcome of the conference in Tokyo; and that he expressed good wishes for the success of the conference.^a

35. MUTO explained most clearly and reasonably his attitude toward China. When he took office as Chief of the Military Affairs Bureau, he had no knowledge of diplomatic or political problems; but,

33. a. Ex. 3456, para. 4, Tr. 33,192
b. Tr. 6730-1; Ex. 613A, Tr. 6733

34. a. Ex. 3438, Tr. 32,941-3

1 since he had served in China, he did have certain
2 convictions about that situation. He considered that
3 the trouble between Japan and China was assuming the
4 character of a racial war, and that their differences
5 would not be solved by maintaining the erstwhile
6 views of the so-called experts on China; and that
7 Japan should work out at once a plan for dealing
8 with the Chiang Regime, breaking the impasse and
9 bringing the incident to a close as soon as possible.
10 He also wanted to harmonize relations between Japan,
11 the United States and Britain. This is amply demon-
12 strated by evidence to be discussed later.^a

13 36. That the above statement was honest and
14 forthright was clearly seen in his actions as Director
15 of the Military Affairs Bureau. This was further clari-
16 fied by the testimony of Lieutenant Colonel ISHII, who
17 was in charge of foreign affairs in the Army as a
18 senior officer of the Military Affairs Section under
19 MUTO.^a Colonel ISHII stated that MUTO felt that early
20 settlement of the China difficulty was the first requi-
21 site. He always advocated the maintenance of peace-
22 ful cooperation with other countries, and on at least
23 three occasions was heard to oppose aggressive policies.
24

25 35. a. Ex. 3454, Tr. 33,095
36. a. Ex. 3480, Tr. 33,675-6

1 Under orders of MUTO, Colonel ISHII studied plans for
2 opening of the Yangtze-kiang and Chu-kiang Rivers, in
3 order to comply with American wishes. The Chu-kiang
4 was opened, but difficulties prevented the opening
5 of the Yangtze. However, on at least two occasions
6 MUTO urged further efforts to that end.

7 37. The prosecution submitted in summation
8 that MUTO played a positive role in the fall of the
9 YONAI Cabinet, due to the resignation of War Minister
10 HATA, leading externally to the conclusion of the
11 Tripartite Pact and internally to the formation of
12 the Imperial Rule Assistance Association.^a As to
13 this claim, we must point out the contradiction in
14 the testimony of YONAI, Mitsumasa, and TANAKA, Ryu-
15 kichi, on which the prosecution relied.^b While
16 YONAI testified that the reason for the fall of his
17 Cabinet was that the Army considered it to be weak,
18 as it had failed to support the establishment of the
19 Imperial Rule Assistance Association as well as the
20 Japanese-German Alliance, TANAKA claimed that it was
21 mainly due to the issue of concluding the Tripartite
22 Pact which, he said, the Military Affairs Bureau had
23 insisted upon.

24 37. a. 00-25-28

25 b. YONAI, Ex. 3831A, Tr. 37,999-38,002;
TANAKA, Tr. 15,901

1 38. As to the testimony of YONAI,^a it
2 should be noted that at that time the Imperial Rule
3 Assistance Association did not exist and could not
4 have been anticipated, and that the question of a
5 Japanese-German alliance was not introduced to the
6 YONAI Cabinet, as YONAI himself said. The Tribunal
7 will also recall the inconclusive and dubious quality
8 of YONAI's testimony, in view of his often disjointed
9 and confused answers as a witness.^b As for TANAKA,
10 he was absent from Tokyo at the time of the resigna-
11 tion of the YONAI Cabinet, serving in China as a staff
12 officer. TANAKA based such testimony on hearsay, and
13 from persons long-since deceased; so that he could
14 only admit that he had not been able to get first-
15 hand information, let alone any comment from MUTO.^c
16 Thus it is demonstrated that TANAKA's testimony above
17 cited was so groundless as all his other attacks on
18 MUTO.
19

20 39. Contradictory to this testimony, the
21 record shows the following facts. It was in the
22 middle of October 1939, when the ABE Cabinet was in
23 power, that MUTO took office as Chief of the Military
24 Affairs Bureau. On assuming office, he found that,

- 25 38. a. Ex. 3831, Tr. 37,999-38,002
 b. Tr. 28,939
 c. Tr. 1945-6; Ex. 3238, Tr. 29

1 at the time of the HIRANUMA Cabinet (preceding the
2 ABE Cabinet) the Army, hoping for the conclusion of
3 the Tripartite Pact, endeavored to realize it but was
4 unsuccessful, due to the conclusion of the Russo-
5 German Non-Aggression Pact. In those days there
6 was strong feeling in Japan that Japan had been cir-
7 cumvented by Germany and that Hitler and Mussolini
8 could not be trusted. MUTO was also of the same
9 opinion,^a saying that while Hitler and Mussolini
10 might fail and still find personal glory, if Japanese
11 statesmen failed in their guidance of the country,
12 they would spoil a national pride going back three
13 thousand years, and that it was dangerous to deal
14 with new-comers like Hitler and Mussolini. MUTO
15 expressed this thought even to a German, Colonel
16 Groner.^b

17 40. At the time of the battle of Dunkirk
18 it was generally believed in Japan that Germany
19 would win the final victory and that the Tripartite
20 Alliance should be concluded. It is a tribute to
21 MUTO's sound judgment as a military man that he pre-
22 dicted that the war between Britain and Germany would
23 be protracted, and doubted that Germany would get the

25 39. a. Ex. 3454, para. 19, Tr. 33,111

Also reference Tr. 33,218

b. Tr. 33,112

final victory.^a

41. In summation, the prosecution stated that when MUTO was interrogated at Sugamo he admitted that as an individual he was in favor of the Tripartite Pact, but in his official capacity he had no say on matters of policy, which had already been decided upon by the Chief of the General Staff and the War Minister.^a But this is unquestionably a mistake in translation, as MUTO testified that what he said was that "I said I was not in favor of it."^b This is clear from his statement, "I did not advocate it," given immediately preceding the passage cited; and also from his reply, "No, personally I did not advocate it."^c Furthermore, the tone of the entire interrogation substantiates these assertions.^d He gave forthright and explicit answers on these points on cross-examination^e and, both by his actions and his words, has left no room for doubt as to his attitude. These matters were also clarified by the testimony^f of IWAKURO and ISHII.

40. a. Ex. 3454, Tr. 33,112-3; Ex. 3442, Tr. 32,996; Ex. 3480, Tr. 33,219

41. a. 00-44

b. Tr. 33,225

c. Tr. 33,226

d. Ex. 255, Tr. 33,225-7

e. Tr. 33,225-6

f. Ex. 3442, Tr. 32,995; Ex. 3480, Tr. 33,676-7

1 42. Next, the resignation of the YONAI
2 Cabinet was by no means due to a sharp division of
3 opinion between War Minister HATA and the Cabinet.
4 While HATA was in office he never once called for
5 conclusion of the Tripartite Alliance. In regard
6 to this point, both YONAI, then Premier, and ARITA,
7 Foreign Minister, testified before the Tribunal.^a
8 Moreover, in an excerpt from the HARADA Memoirs pre-
9 sented by the prosecution, it is said that MUTO said
10 to ISHIWATA, Chief Secretary of the Cabinet, that as
11 far as diplomatic matters were concerned it was going
12 very well.^b
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25 42. a. Ex. 3198, Tr. 28,917; Ex. 3200, Tr. 28,945
 b. Ex. 3808, Tr. 37,862

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1 43. In those days the General Staff, eager
2 to bring about a settlement of the China Incident as
3 speedily as possible, demanded that Japan call upon
4 Germany to act as an intermediary. At the same time,
5 it called for strengthening the domestic structure
6 on the ground that the international situation might
7 deteriorate at any time. However, the YONAI Cabinet
8 did not react enthusiastically to the request of the
9 General Staff.^a Just at that time Prince KONOYE
10 resigned as President of the Privy Council and started
11 a campaign to set up a new political party with a
12 view to reforming the domestic structure. While he
13 received the support of dominant public opinion, the
14 YONAI Cabinet became unpopular. Such being the case,
15 the Chief of the General Staff issued a strong warning
16 to War Minister HATA that he should do his utmost to
17 cope with the situation.^b The result was that HATA
18 was caught between the General Staff and the Cabinet
19 and felt obliged to resign his post. This is the
20 true reason for the resignation of the YONAI Cabinet,
21 and illustrates again the superior influence and
22 aggressiveness of the General Staff.

24 44. The prosecution, however, has attempted

25 (43. e. Ex. 3454, Tr. 33,114.
 b. Tr. 33,115.)

persistently to impress the Tribunal with MUTO's role.

1 For that purpose they have cited the testimony of
2 TANAKA, Ryukichi, YONAI's interrogatory, and a passage
3 from the HARADA Memoirs which says that when MUTO,
4 with Vice Minister ANAMI, called on Chief Cabinet
5 Secretary ISHIWATA, he, MUTO, said, "There is no
6 other way but to have War Minister HATA resign."^a

7 However, as to the falsehood of this passage from
8 HARADA's Memoirs, it has been made clear by MUTO's
9 answers to the questions of the acting President
10 when he stood in the witness box, explaining the
11 reasons and circumstances of his calling on ISHIWATA,
12 and explaining that his visit was made under orders
13 from the War Minister and Vice Minister.^b Moreover,
14 ISHIWATA later testified himself that, MUTO being a
15 military man and particularly careful in his use of
16 words, could not have said that War Minister HATA, his
17 superior, would be compelled to resign. He did say
18 that HATA, by the circumstances, might be obliged to
19 resign.^c

21 45. We invite the particular attention of
22 the Tribunal to the fact that the defense has chal-
23 lenged throughout the accuracy and reliability of

24 (44. a. Ex. 3808-A, Tr. 37,862; Ex. 3831-A, Tr. 38004;
25 also Tr. 15,901.

b. Tr. 33,241-6

c. Ex. 3883, Tr. 38,710-1).

1 the HARADA Memoirs. I personally challenged an excerpt
 2 offered against MUTO to the effect that he had visited
 3 ISHIWATA in the company of the War Vice Minister;
 4 and we later produced the affidavit of ISHIWATA
 5 himself, flatly denying the accuracy of the HARADA
 6 Memoirs by stating "positively" that he did not talk
 7 with MUTO in the company of Vice Minister ANAMI.^a
 8 I further made the observation, which I think is
 9 highly important for the Tribunal's consideration,
 10 that the prosecution could have presented testimony
 11 by ISHIWATA himself, rather than relying on the second
 12 and third-hand hearsay of HARADA.^b The prosecution
 13 did not even wish to cross-examine him. As for
 14 YONAI's remark, it is only a statement that MUTO
 15 was Chief of the Military Affairs Bureau at the time,
 16 and moreover he immediately added that he did not
 17 know MUTO personally.^c

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 19 46. Lastly, as to TANAKA's testimony, we
 20 repeat that his absence from Tokyo at that time dis-
 21 qualifies him from giving reliable testimony on the
 22 point in question.^a

23 47. Further, it should be noted that during
 24 (45. a. Ex. 3883, Tr. 38,710
 25 b. Tr. 38,709
 c. Ex. 3831-A, Tr. 38,004.
 (46. a. Reference Tr. 29,397-8; DD-61)

1 the period in which the issue assumed the most serious
2 proportions, MUTO, accompanying the Emperor of Man-
3 chukuo, who was on a visit to Japan, was absent from
4 Tokyo; and that on returning he found that the letter
5 from the Chief of the General Staff had already been^a
6 delivered to General HATA by the Vice Chief of Staff.
7 Surely the general resignation of the Cabinet is not
8 attributable to MUTO. The prosecution states that
9 MUTO was present at the Three Military Chiefs' con-
10 ference prior to the resignation of War Minister
11 HATA, and suggests that he was also present when
12 HATA consulted with the military councillors of the
13 Army Council.^b But this is untrue. HATA met
14 separately some of the generals who were military
15 councillors at that time; he did not cause a conference
16 to be held. Moreover, the prosecution's contention^c
17 on these points is based on rejected evidence.

18 48. The conclusion of the Tripartite Pact
19 was chiefly due to the part played by MATSUOKA,
20 Foreign Minister of the KONOYE Cabinet. It was not
21 until the chief of the treaty bureau explained in the
22 Investigating Committee of the Privy Council as to
23 the interpretation of the articles of the treaty that
24 (47. a. Ex. 3454, Tr. 33,114-5, 33,230, 33,244-7,

25 29,023

b. 00-27

c. Tr. 28,942, 37,246-7)

MUTO could understand the significance of the treaty.^a

1 And as Colonel ISHII testified, MUTO, about the middle
2 of June in 1941 was bewildered at the real intentions
3 of Foreign Minister MATSUOKA, who advocated an
4 aggressive policy against the Soviet Union at one
5 time and proposed Japan's advance towards the South
6 at another.^b And again ISHII stated that MUTO

7 never insisted personally on Japan's participation in
8 the Triple Alliance between Japan, Germany and Italy;
9 that Foreign Minister MATSUOKA had the whole field
10 to himself in the conclusion of the pact; that MUTO
11 himself read the text of the treaty for the first
12 time after its conclusion; and that, even in the
13 Foreign Ministry, only those especially concerned
14 with it participated in the negotiations.^c As to
15 this, the witness I'AKURO testified much to the same
16 effect.^d

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18 49. Asserting that MUTO's receiving a decor-
19 ation was strong evidence of his co-operation with
20 Germany and entry into the alleged common conspiracy,
21 the prosecution stated that "MUTO was recommended to
22 Ribbentrop for the decoration of the Great Cross of
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24 (48, a. Ex. 3480, Tr. 33,676; Ex. 3442, Tr. 32,995;
Ex. 3454, Tr. 33,116-7.
25 b. Ex. 3480, Tr. 33,678
c. Ex. 3480, Tr. 33,676
d. Ex. 3442, Tr. 32,995)

Germany because of his contribution to German-Japanese cooperation.^a But exchange of decorations is commonly known to be diplomatic custom, and it is universally known that those who ought to be recognized because of their occupying official positions habitually receive decorations of suitable degree from other countries. That he was recommended for recognition due to extraordinary activities, rather than for the position he held, is another of the prosecution's unconvincing contentions. The question has been clarified by the testimony of General Kretschmer.^b Further, General MUTO's answer on cross-examination^c makes clear that he was against the conclusion of the Tripartite Pact; that the Germans did not make a "colossal diplomatic blunder" (the prosecution's term) in recommending him for a decoration; and that the simple truth was that, once the Tripartite Pact had been concluded at the insistence of Foreign Minister MATSUOKA, the collateral matters related thereto were handled, in the case of the War Ministry, by the Military Affairs Bureau. His personal opinions were of no consequence whatever, and he simply worked, as any good military man would, within the bounds of

(49. a. 00-46-51; Tr. 11,355, 16,874

b. Ex. 3034, Tr. 27,092-5

c. Tr. 33,222-3)

the duties assigned him.^d In point of fact, he
1 first learned of the matter of the recommendation
2 when he heard of it in this courtroom. At the time
3 of the recommendation he had already been transferred
4 to Sumatra, and never received any such decoration.^e

5 50. Presenting excerpts from a newspaper
6 article, the prosecution presented a totally unfair
7 version of a speech made by MUTO before the Diet
8 Accounts Committee, attempting to show that he
9 advocated totalitarianism and extreme nationalism,
10 disclaiming party politics and liberalism.^a The
11 summation suggests that, taking advantage of good
12 opportunities such as the German victory at Dunkirk
13 and France's surrender, he made this public speech
14 as a preliminary step to Japan's conclusion of a
15 military alliance with Germany.^b We wish to point
16 out, however, that this speech was made about two
17 months prior to the battle of Dunkirk and the
18 surrender of France. It could hardly be possible
19 for him to have foreseen Germany's victory two months
20 before it occurred. Here, again, the weakness,
21 sometimes even the absurdity, of the charges against
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23 (49. d. Tr. 33,223

24 e. Ex. 3454, Tr. 33,118

(50. a. Ex. 2243, Tr. 16,137-9; 00-20, 22

25 b. 00-20, 22)

him are disclosed. Moreover, the newspaper report,
1 introduced by the prosecution, is a distorted report
2 of the speech, and a study of the stenographic record
3 of the same speech, which was presented in his defense,
4 makes the distortion clear.^c

5 51. The above-mentioned speech was presented
6 by MUTO, owing to the War Minister's inability to
7 attend, before a small committee of perhaps ten
8 members -- not, as charged, on the floor of the Diet.
9 He made the speech as the War Minister's representative.
10 In it he stated that cooperation between the political
11 parties, high government officials and the military
12 was indispensable to overcome the national crisis
13 then confronting Japan. As is clear from that steno-
14 graphic report, his statement, far from disclaiming
15 party politics, urged their strong development. And
16 the phrase, "the totalitarian principle should be
17 adopted", came from the interpellator, not from MUTO.
18 He acknowledged that that term was used in Europe,
19 but that it was inappropriate for Japan; that the
20 best expression he could think of for Japan's par-
21 ticular creed was "a principle of national polity."
22 The Japanese expressions for that phrase and for
23 "nationalism" are very much alike -- Kokutai Shugi
24 (50. c. Ex. 3440, Tr. 32,966-73)
25

and kokuke shugi -- but a study of the stenographic record shows his true attitude.

52. As for his denial of liberalism, as alleged by the prosecution, MUTO merely emphasized the great need for everyone to work for the national welfare in a time of great need, and to sacrifice thought of self. Furthermore, he replied to HAMAJI's denunciation of the bureaucrats, the military, and the political parties by saying that all such elements, if they were truly at fault, should correct themselves and accept criticism. He welcomed any such suggestions as far as the military were concerned.^a The Prosecu-^b tion quotes the interpellation by Diet member INADA, whereas INADA was not present when MUTO spoke, and, moreover the document relative to that speech was rejected by the Tribunal.

53. An unbiased reading of MUTO's speech proves that there is not a single sentence insisting on the abolition of political parties and liberalism. Yet it is contended by the prosecution that his speech brought immediate results, such as Ambassador Ott's concerning the stiffening of Japan's attitude toward Britain, Count ARIMA's talk with KIDO regarding the

(52. a. Ex. 3440, Tr. 32,968; Tr. 32,972;
Ex. 3454, Tr. 33,098-101.
b. 00-23-4)

1 merger of political parties, and KONOYE's dining with
2 these two persons.^a However, such events took place
3 because of changes in the general situation at home
4 and abroad, and no reliable evidence has been produced
5 to prove that the speech by MUTO brought about such
6 events.

7 54. MUTO's testimony on redirect examination
8 renders this even more clear, and it stands unrebutted.
9 He showed that he attended that committee meeting in
10 question at the request of the War Minister, who was
11 unable to attend; that he was never aware at any time
12 of insistence on the part of the Army that there be
13 a single political party; rather, that the Army felt
14 that a single party system would be tantamount to no
15 political parties at all and would collapse through
16 internal corruption; and that the Army never insisted
17 on the disbanding of all political parties.^e This
18 situation was also testified to by the witness OKADA,
19 one of the former leaders of the Seiyukai.^b

20 55. TANAKA, Ryukichi, testified that,
21 shortly after the reply of 25 November was received
22 from Secretary Hull, to Foreign Minister TOGO's
23 proposal, at a meeting of Bureau Chiefs of the War
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25 (53. a. 00-23-4

(54. a. Tr. 33,273-4

b. Tr. 17,741-2)

Ministry MUTO said that if Japan adopted the proposal
1 of the United States it would result in a general ex-
2 haustion of Japan's resources, and a general collapse.^a
3 He testified also that at a meeting in the War Ministry
4 on 9 December 1941 MUTO said that the dispatch of
5 Ambassador KURUSU and the Tatsuta Maru was nothing
6 more than a camouflage.^b He also testified that at
7 a meeting of bureau chiefs on or about 27 November
8 1941 MUTO read a document entitled "Principle Reasons
9 Alleged for the Commencement of Hostilities Against
10 the U.S.A. and Britain."^c This is entirely false
11 testimony by TANAKA, as is shown by the testimony
12 of the witness MIKI, then Chief of the Medical Affairs
13 Bureau, who also attended the same meeting. MIKI,
14 after testifying that what TANAKA stated was untrue,
15 added that on 9 December 1941 all the bureau chiefs
16 did not assemble in the diningroom, as they were all
17 too busy.^d

19 56. MUTO himself flatly denied the above
20 claims of TANAKA, saying that he understood the dis-
21 patch of KURUSU to America was a step sincerely taken.
22 He knew nothing regarding the dispatch of the Tatsuta

23 ((55. a. Tr. 15,868
24 b. Tr. 15,871
25 c. Ex. 1175, Tr. 10,362
d. Ex. 3447, Tr. 33,056)

Maru, which had no connection with the War Minister.^a

1 57. It is suggested that it is evidence of
2 participation in a conspiracy that MUTO attended
3 Liaison and Imperial Conferences and the Investigating
4 Committee of the Privy Council.^a It is quite clear
5 that this is wrong, and that he attended such con-
6 ferences only in the capacity of a secretary or ex-
7 plainer. He had no voice, and no right to sign the
8 resolutions decided upon. On cross-examination he was
9 asked how it was possible for such a high-ranking
10 officer to do such insignificant work, and this
11 suggestion was repeated in the summation.^b As compared
12 to the high officials who were members of such con-
13 ferences, the Chief of the Military Affairs Bureau
14 was insignificant. The ranks which he held at the
15 time were less than corresponding ranks in most other
16 armies, and it was not at all unnatural that he attended
17 to miscellaneous matters as a secretary or administra-
18 tive official. Does the prosecution contend that dis-
19 cussions on such high levels in any other country would
20 be attended by some lowly private or non-commissioned
21 officer? It would be an absurd contention; yet that is
22 the implication found in their cross-examination.
23
24

(56. a. Ex. 3454, Tr. 33125.

25 (57. a. Tr. 16,800; Ex. 3480, Tr. 33,673-4; Tr. 16,873
b. Tr. 33,180-1)

MUTO explained in detail about the arrangements at these conferences and the work of the secretaries. And Mr. YAMAMOTO, in explanation of their duties, testified that they involved only clerical work, namely the "preparations, explanation and adjustment of the draft, as well as the collection of the materials concerned." And he made clear that drafts discussed at such conferences were not written by the secretaries, but rather by the ministries concerned. "To collect and submit and distribute these drafts to the conference is what is meant by 'preparation'." The decision of the conference was not made by a simple majority, but was continued until all views of the members present were completely agreed, then all members present signed the draft decided upon. But "...neither HOSHINO, MUTO nor OKA had any right to express their opinions, to vote, nor had they the right to sign the document." The secretaries at the Imperial Conferences had even less to do, simply distributing the documents prepared by the organ in charge; and, again, never signing the resolutions. As to the duties of the explainers at the Investigation Committee of the Privy Council, it should be noted that, primarily, only political matters

58. a T. 33,269-70

b Ex. 3444, T. 33,016-8

1 were to be explained and only when technical explana-
2 tion of details was required did the explainers speak
3 for the minister. MUTO was such an explainer, but
4 actually he never explained even once.^c That was as
5 he testified; and it is curious that throughout this
6 trial the prosecution has never once been able to
7 quote him at these conferences, or even to prove what
8 subjects he allegedly discussed. The only remote ap-
9 proach to such a thing was by a reference in the prose-
10 cution's summation which was later corrected by an
11 errata sheet, since it apparently was based on a pro-
12 posed exhibit which was never actually accepted by
13 the Tribunal.^d

14 59. The accused TOJO has given reliable and
15 authoritative testimony on the matter of these con-
16 ferences, showing that the cabinet was responsible
17 for matters of administration, while matters of supreme
18 command were the concern of the High Command. "The
19 Directors of the Military and Naval Affairs Bureau
20 and the Chief Cabinet Secretary were to be present at
21 the conference, but they were not responsible members."^a
22 The prosecution asserts that, through cross-examination
23 of TOGO, it has found evidence that MUTO took part in
24

25 58. c Ex. 3454, T. 33,097-8
d 00-83-4
59. a Ex. 3000, T. 36,336-7

the conference discussions. ^b However, the testimony centered on HOSHINO; and, even as to him, his participation was not as significant as is asserted; the prosecution obviously strains the point by giving a somewhat elaborate explanation of what it means to take part in a debate. TOGO testified, however, only that HOSHINO spoke as an explainer, within the limits of his duty, and never persisted in his point as the prosecution asserts. It is clear that TOGO does not recollect anything that MUTO said, and, as already noted, there is no evidence whatsoever that he was an active debater, discussing matters of policy-making. ^c The fact that he attended conferences, which is not disputed, does not mean that he participated in a so-called joint conspiracy.

60. It has been proved that MUTO did not attend the Imperial Conference of 2 July. ^a Although the prosecution originally claimed that he attended, this was abandoned in the answer to our motion to dismiss. ^b In spite of this, the prosecution in its summation again contends that he attended, demonstrating again the confusion and distortion in the claims against

59. ^b 00-81

^c T. 36,085-6

60. ^a Ex. 1107, T. 10,140; Ex. 3480, T. 33,673-4

^b T. 16,873

MUTO.

61. The prosecution emphasizes the importance of the functions of the Chief of the Military Affairs Bureau, and suggests that MUTO was what might be called the "Chief of Staff of the War Ministry."^a It is further suggested that, even though he and others attended conferences only in a secretarial capacity, "they were all persons of much greater position and influence than the word would imply."^b Further, it is said that he was a member of several boards and committees and that he "exercised directing or possibly controlling influence over domestic and international policies and politics, over propaganda and press control, and over military and naval action. For instance, in June 1940 he was with KOISO in a discussion with the German Ambassador of various aggressive schemes."^c The record does not support any such claims, unless it be the testimony of TANAKA, who was rumored to be a rival of MUTO at that time, and YAMAZAKI, Shigeru, an officer attached to the P.O.W. Administration Bureau.^d We have already demonstrated the unreliability of TANAKA's testimony,^e and have

60. c 00-58

61. a 00-4

b T. 16,800

c Ex. 523, T. 15,870-1; 16,873

d 00-4; 100

e T. 15,863-4

observed how heavily the prosecution has relied on it.

1 As to YAMAZAKI,^f he was not attached to the bureau when
2 MUTO was the Chief of the Military Affairs Bureau
3 and he may well have testified as he did in order
4 that the P.O.W. Administration Bureau might not be
5 involved in the responsibility for disregarding the
6 organization and system of the War Ministry. Under
7 such considerations, his testimony is highly suspect.

8 62. As to the authority of the Military Af-
9 fairs Bureau and its chief, we submitted the affidavit
10 of Colonel NISHIURA, who had long served with the bu-
11 reau, was well acquainted with MUTO's actions, and who
12 was at the same time generally admitted as an authority^a
13 on the subject of the bureau's duties and functions.
14 He made it clear that the Chief of the Military Affairs
15 Bureau had exactly the same authority as other bureau
16 chiefs, within and without the War Ministry. As a
17 result it is clear that he had no authority whatsoever
18 in deciding important policies; he has not been shown
19 even once to have given a decision on such matters. He
20 merely acted as a subordinate to the War Minister and
21 discharged faithfully such duties as were placed upon
22 him. It is apparent, too, that his duties required him
23 to handle business between the General Staff and the
24

25 61. f T. 14,844-6

62. a Ex. 3439, T. 32,946-59

1 War Ministry, and to act as spokesman for the General
2 Staff in dealing with other government agencies.

3 63. It is insisted that MUTO often repre-
4 sented both the Army and Navy at the same time. This^a
5 contention is based on the fact that he once gave an
6 address on behalf of the Army and Navy at a meeting
7 of the Imperial Rule Assistance Association. However,
8 it had been agreed by the War and Navy Ministers that
9 such addresses were to be given by representatives of^b
10 both ministries.

11 64. The prosecution exaggerates the point
12 stated by TANAKA that the War Ministry, particularly
13 the Military Affairs Bureau, had authority to rule
14 the budget and thus control the General Staff.^a To
15 that assertion, NISHIURA's words are an adequate answer.^b
16 He explained that budget matters were the concern of
17 the Military Administration Section; and that that
18 section could never intentionally interrupt a plan of
19 the General Staff, which was thoroughly familiar with
20 the amount of appropriations and the outline of their
21 distribution. It is further alleged that MUTO acquired
22 for the Army its necessary appropriations, but this
23

- 24 63. a 00-6
25 b T. 33,266
64. a T. 15,859-60
b Ex. 3439, T. 32,956-7

also is untrue. As shown in the organization ordinance, with regard to the Army appropriation, negotiations with the Finance Ministry were to be conducted by the Chief of the Intendance Bureau, and, at cabinet meetings, by the War Minister.^c

65. NISHIURA also makes clear that although MUTO was named to various committees of the cabinet or other ministries, this was equally true of all other bureau chiefs, for the purpose of liaison. The resolutions of such committees were not binding on the ministries involved, and, as a matter of fact, those named to the committees were rarely present, being most often represented by a proxy.^a Anyone who occupied the post that MUTO did would likewise be appointed to such committees.

66. The prosecution further asserts that MUTO exerted remarkable influence on propaganda and control of newspapers.^a This assertion must be based only on what TANAKA, Ryukichi, testified.^b His error has been conclusively proved.^c TANAKA is apparently ignorant of the regulations with regard thereto. MUTO has given a thorough, detailed, and undisputed explanation of this

64. c 00-6; Ex. 74, Art. 25, p. 684

65. a Ex. 3439, T. 32,958

66. a T. 16,873

b T. 15,871

c Ex. 3439, T. 32,948-9; Ex. 3454, T. 33,093, 33,108

d
 matter, showing that, during his tenure, the Military
 1 Affairs Bureau took charge only of editing the
 2 "Tsuwamono", an innocuous army weekly; that soon after
 3 the Second KONOYE Cabinet was organized, all censor-
 4 ship and control of newspapers and magazines relating
 5 to the Army were taken over by the Intelligence Bureau
 6 of the Cabinet; and that the Chief of the Information
 7 Section of Imperial General Headquarters was not at
 8 all controlled as such by the Chief of the Military
 9 Affairs Bureau.

10
 11 67. TANAKA, Ryukichi, testified that, from
 12 his own "subjective view" and "from the side lines",
 13 General TOJO was influenced by MUTO^a, and that the
 14 Military Affairs Bureau promoted the idea of an alliance
 15 with Germany.^b He gave nothing concrete -- merely his
 16 own opinion. Moreover, his testimony has been com-
 17 pletely upset by cross-examination.^c He testified that
 18 various bureau chiefs were treated equally by TOJO and
 19 that officers were never allowed to do anything outside
 20 his will or intentions. Further, Lieutenant General
 21 TANAKA, Shinichi, confirmed that MUTO served most faith-
 22 fully, always respecting the instructions and orders

23 66. d Ex. 3454, T. 33,108-9

24 67. a T. 15,900

b T. 15,900-1

25 c T. 15,906-8; 38,900

1 of his superior, and remaining strictly within the
2 bounds of his actual duties.^c

3 68. We should like to refer to what MUTO
4 testified regarding the above^a and to NISHIURA's affi-
5 davit, in which he deposed that from the time General
6 TOJO took the post of War Minister, no views of the
7 Chief of the Military Affairs Bureau were considered
8 on personnel matters.^b As a final consideration on
9 this subject, we point to the fact that MUTO, soon
10 after the outbreak of the Pacific War, was ordered to
11 make a trip to the southern region (in March 1942) and
12 upon his return was transferred to Sumatra, not return-
13 ing to Tokyo until the end of the war.^c Had he served
14 as the "brain" of General TOJO, as stated by TANAKA,
15 why would he have been transferred at the most criti-
16 cal moment? General TOJO served for two years as
17 Premier and War Minister after General MUTO was trans-
18 ferred.

19 THE PRESIDENT: We will adjourn until half
20 past one.

21 (Whereupon, at 1200, a recess was taken.)
22

- 23 67. d T. 16,170-1
24 68. a Ex. 3454, T. 33,120-1
25 b Ex. 3439, T. 32,949
c Ex. 3454, T. 33,131

AFTERNOON SESSION

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1 The Tribunal met, pursuant to recess, at
2
3 1330.

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now in session.

6 THE PRESIDENT: With the Tribunal's permission,
7 the accused KAYA will be absent from the courtroom
8 the entire afternoon, conferring with his counsel.

9 Mr. Cole.

10 MR. COLE: May it please the Tribunal, I
11 resume at page 51, paragraph 69:

12 69. In its reply to the defense motion to
13 dismiss, and in summation, ^(a) the prosecution refers to
14 exhibit 523 and alleges therefrom that MUTO was "with
15 KOISO in a discussion with the German Ambassador of
16 various aggressive schemes." ^(b) But the exhibit itself
17 warrants no such allegations. ^(c) On the contrary, it
18 serves only to show how hard MUTO worked for peace
19 between Japan and China, and his recognition of the
20 need to settle the China Incident. And MUTO's comment ^(d)
21 shows that the date of the exhibit corresponds with the
22

- 23 69. (a) OO-52-61.
24 (b) Tr. 16,873.
25 (c) Ex. 523, Tr. 6174-8.
(d) Ex. 3454, Tr. 33,115-6.

very time when opinion in Japan was in favor of asking Germany to act as mediator. As for the French Indo-China reference, it was at the time when an agreement had been reached regarding transportation of materials to the Chungking Regime, and an Inspection Corps under NISHIHARA had already departed for Indo-China. This did not involve MUTO's personal opinions, "but a description of what was then really going on." The references to KOISO and MUTO have no connection with the talk with the German Ambassador either in point of time or place.

70. With regard to Japan's advance into the South Seas region, ^(a) that is, particularly MUTO's alleged connection with it, there is absolutely no convincing proof. It is claimed ^(b) that he was appointed advisor of the South Seas Bureau of the Overseas Ministry, requiring him to supervise the detailed development of Japan's intrusion to the south. According to the organizational regulation of that ministry, ^(c) it was a nominal and powerless post, carrying no important duty. And there is no evidence whatever that he attended any meetings or took part in their deliberations or decisions. The same is true

70. (a) 00-52-61.
(b) 00-56.
(c) Ex. 87, Tr. 684.

1 of the allegation as to his appointment as a member of
2 the Establishment Committee of the South Seas Develop-
3 ment Bank. (d)

4 71. Now as to exhibit 3445, presented by the
5 prosecution. It was attempted to show that the document
6 was drawn up by MUTO. (a) In summation (b) the prosecution
7 made the same attempt most pertinaciously. The document
8 is a tentative draft of a demand for oil and other
9 materials in case either Plan A or B should be accepted
10 by the United States. Because, on the cover, there is
11 a pencilled notation, "From MUTO, Chief of the Military
12 Affairs Bureau. YAMAMOTO," the prosecution erroneously
13 urges that MUTO draw the plan. In fact, both in the
14 questions and in the summation, they refer to it as
15 "the MUTO plan" -- a term which is completely unjusti-
16 fied by the evidence and is the prosecution's attempt
17 to fasten on him the authorship of the document.

18 72. The testimony of both witness YAMAMOTO
19 and MUTO (a) prove the error of this supposition.
20 (b) YAMAMOTO testified that when MUTO forwarded the docu-
21 ment he explained that the General Staff had sent it
22 with "very strong terms"; because of that, he was
23

24 70. (d) Ex. 118, Tr. 742.
25 71. (a) Tr. 33,037.
 (b) 00-88-91a.
72. (a) Tr. 33,151-5.
 (b) Tr. 33,043-4.

1 sending it on for reference; that because of his efforts
2 for the submission of Plans A and B, the General Staff
3 was provoked and drew up the proposal partly to
4 embarrass MUTO and as if giving "tit for tat." YAMAMOTO
5 also testified that MUTO said that he was dismayed at
6 that attitude of the General Staff.

7 73. It is only common sense to assume that
8 the pencilled note on the cover of the document is an
9 indication of the person who sent it to YAMAMOTO;
10 surely if MUTO had originated it, it would not appear
11 merely as a pencilled note. To know who originated
12 the document, we have the clear-cut and totally undis-
13 proved testimony of both MUTO and YAMAMOTO. The prose-
14 cution contends that if, as claimed, TOGO had scolded
15 YAMAMOTO for receiving the proposal, the Foreign Minis-
16 try would not have marked it "top secret." But it
17 must be obvious that such a notation would be affixed
18 by the originating office, that is, the General Staff.

19 74. The contents of the document show plainly
20 that it was drafted by those who disliked the negotia-
21 tions between Japan and the United States. The prosecu-
22 tion takes a peculiarly contradictory position by show-
23 ing MUTO's influencing General SUGIYAMA to stop his
24 opposition to the plan, and at the same time claiming
25 that MUTO was the author of this exhibit in

1 question. (a) MUTO's sincerity in the matter of negotia-
 2 tions with America is vividly demonstrated by the testi-
 3 mony of Bishop Walsh, which will be discussed later.

4 75. The prosecution attaches importance to (a)
 5 MUTO's alleged participation in politics, especially
 6 to his being a secretary to the Preparation Committee
 7 on the construction of Prince KONOYE's new order.

8 But such assignments were a routine duty for the Military
 9 Affairs Bureau. MUTO's views on politics are disclosed
 10 in the prosecution's own evidence from the HARADA

11 (b) Memoirs in which he was quoted as saying that the
 12 main characteristic of the new organization was that
 13 of being an association of political parties, and,
 14 because of that, it was not desirable for the army to
 15 participate in it. MUTO also testified that military
 16 men should not participate in politics, but that the
 17 War Minister, being in the cabinet, must do so for
 18 obvious reasons, and must have within his ministry a
 19 means of carrying out the policies decided upon. The
 20 Military Affairs Bureau was the bureau whose task and
 21 duty that was -- to carry out the decisions, but not
 22 (c)
 23 to interfere in politics itself.

24 74. (a) 00-90.

25 75. (a) Tr. 15,900; 15,915-6.

(b) Ex. 3809-A, Tr. 37,874-5.

(c) Ex. 3454, Tr. 33,122.

(a)
76. On the basis of MUTO's interrogatory,
it is alleged that he was always active in politics as
Chief of the Military Affairs Bureau, but this is not
disclosed at all in the exhibit. (b) As he stated on the
stand, he was required as a matter of duty to study (c)
political matters as they affected national defense.

77. It is further claimed that MUTO took part
in formulating the "Outline of the Fundamental National
Policy" of 26 July 1940. (a) The fact is, however, that
the Military Affairs Section was ordered to draw up a
policy plan which was to be presented to the Premier
by War Minister TOJO. This was submitted to the cabinet
conference, and it was there that the so-called "Outline
of the Fundamental National Policy" was developed, the
suggestions of the Military Affairs Section being a part
of the materials considered for it. (b) This fact clearly
demonstrates three points: 1. That the draft from
the Military Affairs Section as a whole was not adopted
for the final plan; 2. That MUTO, not being a cabinet
member, was not present at the conference when the
final plan was adopted; 3. That the draft from the
Military Affairs Section was merely in the form of

76. (a) Ex. 255, Tr. 3435.

(b) 00-26A.

(c) Ex. 3454, Tr. 33,120.

77. (a) 00-30, 31-32.

(b) Tr. 33,251-4.

suggestions, drafted under orders from War Minister TOJO, and not at all the responsibility of MUTO. With regard to the allegation that he attended the Liaison Conference when this matter was discussed, it is probably superfluous to observe that he was only a secretary, had no right to speak or vote, nor to affix his signature.^(c) As regards these matters, the prosecution quotes two statements, but we are at a loss to find them anywhere in the record.^(d)

78. MUTO is claimed to have tried to dissolve the political parties and to organize a pro-militarist party.^(a) It is made clear by his testimony that the claim is a distortion of the facts. He testified that the army had some interest in the new movement by KONOYE, but had no idea of a single party, which would be tantamount to no party at all and would lead to political corruption; he further denied flatly that he ever urged the dissolution of political parties.^(b)

The committee of secretaries above mentioned was a group, ranking definitely below the cabinet members, for the purpose of studying drafts made by other organizations, but no plan was drafted by it.^(c) The

77. (c) Ex. 3444, Tr. 33,916-8; Ex. 3439, Tr. 32,958.

(d) 00-32.

78. (a) 00-33-38.

(b) 33,251-4.

(c) Tr. 33,259.

1 prosecution, however, charges that MUTO tried to delete
2 that part of KONOYE's announcement to the effect that
3 the "new order" was neither Nazism nor Fascism. MUTO
4 explained that, although he urged the cutting of the
5 original draft to half its length, he withdrew that
6 suggestion when he was informed that the original draft
7 had been made by KONOYE himself. The prosecution called
8 that an excuse, both implausible and ridiculous. ^(d) We
9 consider that it is quite plausible that a soldier
10 should want to avoid wordiness, and to claim that this
11 proves him a believer in Nazism or Fascism is in itself
12 implausible and ridiculous. As is evident from MUTO's
13 words before the Diet committee, ^(e) he advocated that
14 Japan should not adopt occidental totalitarianism. And
15 he had no contact with KONOYE so far as the drafting
16 of the constitution was concerned.

17 79. Next, as to the evidence offered regarding
18 the talk between Captain TAKAGI and HARADA, which
19 appears in the HARADA Memoirs, the prosecution con-
20 tended that MUTO said he would have the political
21 parties dissolved, organize pro-military parties, and
22 make KONOYE a robot of the military circles. ^(a) It must
23 be fresh in the minds of the Tribunal that the decision
24

25 78. (d) OO-36.

(e) Ex. 3440, Tr. 32,966-73.

79. (a) OO-37.

1 of the language board proved that only one slight portion
2 of that excerpt was the quotation of MUTO, the rest
3 being the opinions of either TAKAGI or HARADA. (b) In
4 that quotation, MUTO stated that the military's parti-
5 cipation in a politically-tinged group was undesirable;
6 and this has been his consistent belief.

7 80. We have demonstrated in the foregoing that
8 MUTO had no aim or intention of any kind concerning a
9 conspiracy, and that no act of conspiracy has been shown.
10 Throughout his whole military career he never held
11 command responsibility except for the period in Sumatra,
12 and as to that period no crimes were committed under
13 his jurisdiction. At all other times he has simply
14 observed a soldier's duty of carrying out the assign-
15 ments given to him. We take due cognizance of Article 6
16 of the Tribunal's Charter, which states that "Neither
17 the official position, at any time, of an accused, nor
18 the fact that an accused acted pursuant to an order of
19 his government or of a superior shall, of itself, be
20 sufficient to free such accused from responsibility
21 for any crime with which he is charged." But we contend
22 that faithful attention to duty, and the lack of command
23 responsibility must, in all fairness, play the major part
24 in a consideration of charges against a professional
25 military man.

79. (b) Tr. 37,874-5; 37,979.

81. Furthermore, there is strong, undisputed testimony, of an unimpeachable character, that MUTO devoted himself to a successful conclusion of the negotiations with America during this period in the Military Affairs Bureau. This testimony includes the affidavits of Bishop Walsh of Maryknoll,^{a.} General IWAKURO,^{b.} who assisted Ambassador NOMURA, Mr. YAMAMOTO,^{c.} of the American Bureau in the Foreign Office, and Colonel ISHII,^{d.} who dealt with diplomatic matters, as they affected the army, in the Military Affairs Section under MUTO.

82. Bishop Walsh, whose integrity and motives can hardly be questioned, in concert with the late father Drought made efforts to bring the Japanese-American negotiations to a successful conclusion. He testified that MUTO was deeply concerned about, and earnestly exerted himself for the maintenance of peace between Japan and the United States; that their joint efforts proved to be dangerous for both; and that, when he returned to America with Premier KONOYE's letter to President Roosevelt, MUTO provided him with a letter of safe conduct, which

81. a. Ex. 3441, T. 32978.
 b. Ex. 3442, T. 32992.
 c. Ex. 3444, T. 33016.
 d. Ex. 3480, T. 33674.

proved to be of practical use.^{a.} Bishop Walsh's testimony was of such convincing force and sincerity that the prosecution could do nothing but to ignore it.

83. Witness YAMAMOTO testified that MUTO had considerable anxiety in adjusting and softening the strong opinion of some of the military, and always wished the negotiations to succeed.^{a.}

84. Witness IWAKURA testified that on 15 April 1941 a tentative draft of an understanding between Japan and America was handed to Secretary Hull by Ambassador NOMURA and was reported to the Japanese Foreign Ministry and to TOJO. "MUTO was very delighted at this and sent me a telegram of thanks."^{a.} This was confirmed by the testimony of Lieutenant Colonel ISHII, who said that upon receipt of word of the draft of an understanding MUTO was very much pleased.^{b.}

IWAKURA further testified that when he told MUTO that there was a good possibility of success in the negotiations, MUTO was very delighted.^{c.} From all of these undisputed facts, MUTO's sincerity becomes abundantly clear.

82. a. Ex. 3441, T. 32986-7; Ex. 3441-A, T. 32991.

83. a. Ex. 3444, T. 33018.

84. a. Ex. 3442, T. 32998.

b. Ex. 3480, T. 33676.

c. Ex. 3442, T. 32999.

85. The prosecution produced a telegram^{a.}
which was sent to IWAKURO by MUTO and which obviously
stated the views of the army -- not his personal views.
That, as we have shown, was his duty; and he asked to
be kept advised of developments in the negotiations.
The prosecution has attempted to show that these
were instructions; but it should be remembered that
IWAKURO was an assistant to Ambassador NOMURA, and
took his instructions from him. MUTO had no authority
in such matters.^{b.} IWAKURO's efforts in America
were criticised as resulting from an intrigue of the
German-Italian group of the army, but this is obviously
incorrect. And there is no question as to the reason
for his return to Japan: he requested it, and it was
arranged because certain officials objected to
assistance to NOMURA by anyone who was not from the
Foreign Office.

86. Colonel ISHII also gave undisputed
testimony regarding MUTO's efforts regarding the
negotiations,^{a.} He rebuked a military attache in
Berlin for meddling in strictly diplomatic matters;
he expressed the opinion that the war should not be
allowed to spread to the Pacific, regardless of the

85. a. Ex. 3443, T. 33010-12. b. T. 33002-4.
86. a. Ex. 3480, T. 33676-81.

1 Tripartite Pact; that diplomatic negotiations must
2 succeed at no matter what cost; that he cooperated
3 with the Foreign Ministry in attempts to meet America's
4 wishes, made strenuous efforts to avert war, prepared
5 to attend the proposed KONOYE-ROOSEVELT talks, and
6 said that war should be averted at all costs. All
7 this testimony remains uncontroverted. It is convinc-
8 ing throughout, and substantiates HUTO's motives in
9 everything he did.

10 87. As to the document which was drafted at
11 a conference attended by HUTO and OKA, held at the
12 residence of the Foreign Minister on 6 September,
13 the prosecution has erroneously contended that it was
14 drafted by those two alone, and that Japan made no
15 concessions. But the testimony of ISHII^{a.} shows that
16 Japan had a very compromising attitude and that
17 actually many concessions were made in the draft by
18 the TOJO Cabinet.^{b.}

19 88. Concerning the circumstances which
20 brought about the fall of the Third KONOYE Cabinet in
21 October 1941, the prosecution produced the document
22 called "Facts Pertaining to the Resignation of the
23

24 87. a. Ex. 3480, T. 33680.

25 b. DD 3100, Gen. Summation, Japanese-American
Negotiations, Para. 55-56.

Third KONOYE Cabinet."^{a.} This was written personally
 by Prince KONOYE, and demonstrates MUTO's sincere
 effort to avoid war by attempting to make the Navy's
 attitude clear, and thus to control certain elements
 in the army. This fact is also recognized in the
 prosecution's answer to the motion to dismiss in
 regard to the accused OKA.^{b.} MUTO testified fully on
 the matter,^{c.} showing that his attempt to get a clear
 statement of the Navy's attitude was for the purpose
 of more effectively dealing with the General Staff
 and the aggressive elements within the army. This
 testimony is confirmed in statements of Prince KONOYE,
 quoted in the Report on the Pearl Harbor Attack,
 published by the United States Government.^{d.}

89. Witness ISHII told how MUTO urged War
 Minister TOJO that the negotiations should succeed
 and that the China Incident should be settled; that
 MUTO induced General SUGIYAMA to cease his opposition
 to the proposed A and B Plans of TOGO; that he thought
 America would agree to that plan; and that he was
 criticized for being weak-kneed.^{a.}

90. The prosecution has strongly contended

88. a. Ex. 1148, T. 10265.

b. T. 16971.

c. Ex. 3454, T. 33104-5.

d. Ex. 3446, T. 33050-1, 33162-4.

89. a. Ex. 3480, T. 33681-3.

General SUGIYAMA's change of mind is convincing

evidence of General MUTO's attitude and influence.

But it is the duty of a good ~~warrior~~ officer to listen to and to adopt opinions expressed by his subordinates if he thinks those opinions are right and adequate.

This instance cannot reasonably be considered against MUTO; on the contrary, it shows his sincere attitude toward the negotiations. The prosecution argues that he expressed no objection to his senior's opinion on other occasions. According to the prosecution theory, when one's opinion is accepted he can be considered influential, (and thus guilty, in the prosecution's mind) and when he keeps silence he is also charged with guilt. If that be true, how could a man ever at any time be guiltless?

91. For his great eagerness for successful negotiations with America, MUTO was regarded as weak-kneed by some groups, and as a consequence his life was sometimes in danger.^{a.} He was therefore guarded by the police, as was testified to even by the prosecution witness TANAKA, Ryukichi, who was Chief of the Military Service Bureau at the time.^{b.}

92. After the outbreak of war, MUTO was

91. a. Ex. 3454, T. 33103.
b. T. 15919.

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tion witness TANAKA, Ryukichi, who was Chief of the
Military Service Bureau at the time.^{b.}

92. After the outbreak of war, MUTO was

91. a. Ex. 3454, T. 33103.
b. T. 15919.

1 anxious that it be terminated immediately. On New
 2 Year's day, 1942, he told Foreign Minister TOGO that
 3 among the people there prevailed an atmosphere of
 4 victory, and that such a condition was dangerous; that
 5 the war would be extremely difficult, and something
 6 should be done to bring about its termination as soon
 7 as possible; and he requested TOGO, in considering his
 8 plans, to make those which would bring about the
 9 earliest possible termination of the war.^{a.}

10 93. As mentioned above, it is an undeniable
 11 fact that MUTO exerted earnest efforts, sometimes
 12 risking his life, to avoid war with America. The
 13 prosecution unwillingly admits that "MUTO might have
 14 been threatened by some elements in Japan for what
 15 they considered his weak-kneed attitude toward the
 16 United States."^{a.} But they argue that there was no
 17 essential difference between the actions of the ultra-
 18 nationalist element and MUTO's, except in point of
 19 method, comparing him to a heavily-armed thug who
 20 smilingly demands what he wants from his victim; it is
 21 even contended that these were the methods he employed
 22 in his negotiations with Bishop Walsh and Father Drought.^{b.}

24 92. a. T. 33177-9.

25 93. c. T. 15853, 15919, 33103; 00-91.

b. 00-91, Ex. 3441, T. 32979-90.

This would seem to be the ultimate in sophistry.

1 Even after a long and deadly war, Bishop Walsh took
2 pains to forward his affidavit here, praising MUTO in
3 the highest terms. His integrity and that of Father
4 Drought have never been questioned, and it is a well-
5 known fact that Father Drought participated in draft-
6 ing the preliminary American-Japanese understanding
7 of 12 May 1941.^{c.}

8
9 94. Regarding the alleged preparations for
10 war, the contention is made that SUGIYAMA, Chief of
11 the General Staff, issued instructions to TANAKA,
12 Shinichi, Chief of the Operations Department of
13 General Headquarters, to begin preparations for
14 operations,^{a.} and that MUTO is responsible therefore
15 because he allegedly knew about the instructions.^{b.}
16 As a matter of fact, the Chief of the Military Affairs
17 Bureau, being outside the line of the High Command,
18 had no direct connection whatever with operations plans.

19 95. Attempts are made to charge MUTO with
20 guilty knowledge of several matters, but there is no
21 evidence of these claims and they amount, once more,
22 to surmise, insinuation and innuendo. This statement
23 applies to the reference to the printing of money for
24
25 93. c. Ex. 3442, T. 32997; T. 10855; Ex. 1070,
T. 9891; Ex. 1059, T. 9851.
94. a. 00-63, T. 16145; b. 00-64; T. 16145.

1. use in occupied territories; ^{c.} participation in the
 2. activities of the Total War Research Institute, and
 3. the alleged fortification by the navy of the mandated
 4. islands in the South Seas, on which there is not the
 5. slightest evidence connected with MUTO. ^{b.} Nor does
 6. he have responsibility for rough drafts ^{c.} on diplomatic
 7. affairs, drafted by subordinate officers, when neither
 8. his signature, seal nor any mark of approval appears
 9. thereon. As to the printing of military currency,
 10. two points should be considered as of prime signifi-
 11. cance. First, MUTO's signature and seal appear no-
 12. where in the document; it was not signed by him.
 13. Second, as is clear from page 1 of the document, it
 14. came from an entirely different bureau, the Intendanco
 15. Bureau, and was directed to the Financial Bureau of
 16. the Ministry of Finance. What kind of proof is this
 17. that MUTO had "guilty knowledge" of it? ^{c.}
 18.
 19.
 20.
 21.
 22.

23. 95. a. 00-67.
 24. b. 00-67a, b.
 25. c. 00-69.
 d. Ex. 852.

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196. The prosecution states the importance of
 2 considering whether MUTO knew of the secret operational (a)
 3 plans against Pearl Harbor, Singapore, and other points
 4 and offered four arguments, all of which prove inadequate.
 5 The first is that he was Chief Secretary of the Military
 6 Council. (b) The council, however, as shown by its
 7 organization, (c) was not informed of top-secret
 8 operational plans. The second argument relates to the (d)
 9 testimony of Lieutenant General TANAKA, Shinichi,
 10 saying that he was ordered by SUGIYAMA to write the
 11 order for preparations for the possible outbreak of war
 12 to the commander of the South Seas region, and which
 13 required the signatures of War Minister TOJO, Vice-
 14 Minister KIMURA and Military Affairs Bureau Chief MUTO.
 15 But it is true, as stated by TANAKA on cross-examination,
 16 that MUTO's was not a signature of approval on the part
 17 of the Military Affairs Bureau, but simply for the prompt
 18 execution of business thereafter. MUTO's testimony was
 19 to the same effect, and there remains no evidence to
 20 dispute its truth. (e)

22 97. Thirdly, in connection with the unsworn
 23 statement of Major Merrill, he claimed that MUTO said

- 24 (96. (a) 00-94.
 25 (b) 00-95.
 (c) Ex. 3645, T. 35616.
 (d) T. 16169-70, 00-96.
 (e) Ex. 3454, T. 33106-7.)

1 that probably the situation could not be settled without
 2 resort to arms, and that, if they could not be, the two
 3 might meet in Manila in six weeks. ^(a) Even if this
 4 were true -- and it has been substantially disproved --
 5 it does not prove any guilty knowledge as to operational
 6 plans. Taken with all of MUTO's other words and acts,
 7 it is another demonstration of the eager sincerity of
 8 an honest and straightforward military man. The true
 9 facts of the conversation are as testified to by
 10 ^(b) NAKAMURA, Masao. And as is quite generally known,
 11 it is a Japanese custom never to express dates by a
 12 certain number of weeks. The prosecution asserts that
 13 MUTO denied having had an interview with Merrill; but
 14 he was referred to as major, whereas at the time Merrill
 15 was a captain, and MUTO testified to an interview with
 16 a young American captain, denying however, as alleged,
 17 that he had ever invited a military attache to his
 18 office.
 19

20 98. Fourthly, how can it be claimed -- even
 21 if true, which it obviously is not -- that MUTO's saying
 22 that General TOJO had become a hero on 8 December 1941
 23 is proof that MUTO had been informed of operational
 24 plans? This, again, was TANAKA's testimony. ^(a) MUTO

25 (97. (a) 00-97.

(b) Ex. 3884, T. 38714; Ref. Ex. 74, Art. 12, T. 684.

98. (a) 00-98.)

1 knew from Imperial General Headquarters the general
2 outline of war plans, but knew nothing of the Navy's
3 plans to attack Pearl Harbor. The same must be said
4 with regard to his testimony that MUTO called the des-
5 patch of Ambassador KURUSU and the Tatsuta Maru a matter
6 of mere camouflage. It is as Lieutenant General MIKI,
7 Chief of the Medical Bureau, testified ^(b) that all of
8 TANAKA's testimony is false. There has been no attempt
9 to rebutt, and it is plainly true. That TOJO had become
10 a hero was in fact what TANAKA himself told MUTO. ^(c)

11 And when TANAKA was asked if he told TOMINAGA, Chief
12 of the Personnel Affairs Bureau, that TOJO had become a
13 hero, he appeared confused, and after hesitation replied
14 that he had no recollection of having said it. ^(d) If
15 this question were based on untruth, it is reasonable
16 to assume that TANAKA would have denied it promptly and
17 vehemently.

18 99. With regard to the drafting of the declar-
19 ation of war, the prosecution argument is based solely
20 on his interrogation at Sugamo, the correctness of which
21 MUTO denied under oath, to the effect that it had been
22 formulated by MUTO, OKA, and HOSHINO. But MUTO stated
23 under oath that any Imperial edicts of such nature were
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25 (98. (b) Ex. 3447, T. 33055-6.
(c) Ex. 3454, T. 33124.
(d) T. 15920.)

1 required to be prepared by the Cabinet; and that he and (a)
2 OKA only furnished HOSHINO with reference material.

3 INADA, a witness for the accused HOSHINO, made two
4 drafts for an Imperial Rescript, one to be used in case
5 the negotiations succeeded and the other in case they
6 failed. (b) There was no rebuttal on this point, either.
7 And repeatedly throughout this trial the accuracy of the
8 interpreters who participated in the interrogations at
9 Sugamo has been questioned. They surely cannot stand
10 up against sworn testimony, subject to cross-examination,
11 from the witness box.

12 100. We have thus far demonstrated that MUTO
13 had no part in an alleged conspiracy. Our argument
14 applies likewise to the "opening and prosecution of
15 aggressive war." It is true that he was Chief of the
16 Military Affairs Bureau at the commencement of the
17 Pacific War and continued there until around 20 March
18 1942. The responsibility for opening and prosecution of
19 the war was that of the Army General Staff or the
20 Imperial Headquarters. But MUTO was a member of neither,
21 attending, if at all, merely as an attendant of the
22 War Minister. (a)
23 The testimony of the accused TOJO makes
24 clear the nature of those conferences and the execution

25 (99. (a) 00-92; Ex. 3454, par. 28, T. 33125-6.

(b) Ex. 3220, T. 29199.

100. (a) Ex. 3000, T. 36336-7, 36192-3.)

1 of their decisions. MUTO had no voice in such confer-
2 ences, as has been clearly shown heretofore. What MUTO
3 did do was faithfully to carry out his assignments. His
4 conduct went not one step beyond the limits of what is
5 regarded in any country in the world as the proper
6 performance of a soldier. Whoever might have held the
7 same position, no one could have expected acts other
8 than those which he performed.

9 101. Next I should like to consider the matter
10 of command responsibility, for the reason that the lack
11 of it in his case makes the question particularly applic-
12 able. The prosecution, in its summation, has conjured up
13 a category of persons, aside from those who had final
14 responsibility, such as state ministers, "who had the
15 duty or responsibility for policy formulation in a
16 subordinate or intermediate capacity," and has taken (a)
17 as an example the Chief of the Military Affairs Bureau.
18 However, despite the provisions of the Charter, of which
19 we are well aware, it has long been held that inter-
20 mediaries are not held responsible for an act of duty
21 under orders of their superiors, unless such act is
22 plainly and clearly criminal. The prosecution itself,
23 being unable to ignore the principle, says, "There is,
24 unfortunately, a tendency in modern political thinking to
25 (101. (a) K-5, 9.)

overlook the importance of this intermediate group in the formulation of government policy and to impose sole liability upon the persons with ultimate responsibility." (b)

102. The prosecution now suggests the abolition of this established principle, and to apply criminal responsibility to such persons also. But such a proposal, aside from giving complete disregard of the principle of ex post facto, is dangerous simply from the practical point of view. The principle of imposing responsibility only upon the person who has the power of decision, and not upon those who perform their duties in conformity to orders received, is indispensable for the functioning of a modern state. If the commander and the commanded are regarded on the same level, and held equally responsible, no one will be willing to obey orders. The theory of exempting such intermediary persons from responsibility is thus not to be regretted, but rather considered a source of security. The prosecution, while contending for the responsibility of intermediate persons, states that if such a person shows "that in the particular instance he had nothing to do with the specific act or that the policy accepted was in fact opposed by him and contrary to that which he counselled," then he might be exempt from responsibility. (a)

(101. (b) K-9.

102. (a) K-9.)

1 The fact that MUTO, as we have shown, did his best to
2 preserve peace, but that, with all his efforts, it was
3 impossible to avoid war, must bring him within the scope
4 of exemption from responsibility as admitted by the
5 prosecution.

6 103. It is maintained by the prosecution that,
7 on the occasion of the interrogation at Sugamo, MUTO
8 said that he had always held the same opinion as TOJO.
9 But plainly what he meant by "holding the same opinion"
10 (and this was added by the monitor) was that he con-
11 formed to what he was told to do; the key to his
12 activities is in recognition of his life as a genuine
13 soldier.

14 104. It is contended that MUTO was interested
15 in political affairs. (a) He simply stated that he felt
16 obliged to study political affairs in order to perform
17 his duties efficiently. (b) And as a matter of fact,
18 after holding the post of Chief of the Military Affairs
19 Bureau for some time, he desired a change of assignment
20 and applied for it several times to the Chief of the
21 Personnel Affairs Bureau and others. MUTO stated that
22 he also specifically asked for a transfer at a meeting
23 attended by the War Minister, Vice-Minister and Chief
24 of the Personnel Bureau. (c)
25 This was verified by the

(104. (a) 00-26a. (c) Ex. 3454, T. 33119.)
(b) Ex. 3454, T. 33120.

1 witness NODA, then Chief of the Personnel Bureau;
2 though no action was taken because it was considered
3 inadvisable at that time. (d) In the above connection,
4 it is necessary to discuss briefly the prosecution's
5 contention that, in case one could not agree with his
6 minister's view, he should either resign or assume
7 responsibility for his conduct of official duties. (e)
8 Only TANAKA's testimony was relied on as the basis of
9 this contention (f) to the effect that there had been a
10 case where a bureau chief had differed with the minister
11 and had resigned. But on cross-examination at an
12 earlier stage of the trial, when asked if it were not
13 true that officers on the active list could not resign,
14 except for illness, even though they had opinions opposed
15 to those of the minister, he said, "Yes, as you say." (g)
16 This is unquestionably correct, and has been shown by
17 numerous defense witnesses. For instance, witness
18 YOSHIF, when asked under what circumstances an officer
19 could resign, said that except on account of illness,
20 under which he could not continue his work, no other
21 reason was recognized. (h) As we pointed out in opening
22 the individual defense, resignation in the Japanese Army
23

24 (104. (d) T. 29398.
25 (e) T. 16795-6.
(f) T. 15900.
(g) T. 2101-2.

(h) T. 34388.

(i)
was peculiarly and traditionally impossible and this
1 is most worthy of the Tribunal's consideration. MUTO's
2 request for a transfer was realized soon after the out-
3 break of the Pacific War. On his return from an
4 inspection trip, 12 April 1942, he was advised of his
5 appointment to command the Imperial Guard Division in
6 Sumatra (j) and he left Tokyo around 24 or 25 April. We
7 wish to draw the Tribunal's special attention to the fact
8 that MUTO was transferred from the post of Chief of the
9 Military Affairs Bureau at a most crucial period and
10 transferred to a far-distant post. It can reasonably
11 be assumed that if he were as important and influential
12 a person as the prosecution claims, he would not have
13 been transferred from Tokyo, to one of the quietest
14 sectors of the war.
15

16 105. We proceed to the question whether MUTO
17 had any responsibility for ordinary war crimes,
18 especially maltreatment of prisoners of war and other
19 alleged atrocities. Our contention on this point is
20 simple: In the first place, prisoners of war came under
21 the War Minister's jurisdiction only after they had been
22 transferred from Imperial Headquarters, and moreover,
23 the Military Affairs Bureau was not the office in charge
24

25 (104. (i) T. 32934.
(j) Ex. 3454, T. 33131.)

1 of their management. For this purpose there existed
2 special organs called the Prisoner of War Administration
3 Bureau and Prisoners of War Information Bureau. This
4 has been made clear in the general summation. MUTO has
5 given accurate testimony on it. (a) NISHIURA, an
6 authority on the Army system, also gave testimony in
7 detail. (b) The accused TOJO, the person most highly
8 responsible for military administration and later
9 command also, gave authoritative testimony as to the
10 truth of our contention. (c)

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24 (105. (a) Ex. 3454, T. 33127.
25 (b) Ex. 3098, T. 27694-702.
(c) Ex. 3000, T. 36412-3.)

106. What is more important is the fact
1 that during the period when MUTO occupied the post as
2 Chief of the Military Affairs Bureau, plans for the
3 handling of POW were in an undeveloped state and
4 problems such as maltreatment had not arisen, or, if
5 they had, it did not come to his knowledge. MUTO's
6 (a) testimony is clear and unrefuted on this point.
7 He states that the War Prisoners Control Department
8 (Administration) was established toward the end of
9 March 1942; but this was done when he was absent, owing
10 to his inspection trip in the southern area. He was
11 informed of it later.

13 107. The prosecution attempts to hold him
14 responsible for alleged atrocities in Singapore, Hongkong,
15 Manila, Bataan and elsewhere in the early stages of
16 the Pacific War. (a) But those offenses occurred in
17 the course of battles, and if there is responsibility
18 it is on field commanders or finally the Chief of the
19 General Staff. They have no connection with the
20 Military Affairs Bureau of the War Ministry. Except
21 for perhaps ten or twelve days, MUTO was absent from
22 Tokyo from about 20 March 1942 until after the capitulation;

23 106. (a) Ex. 3454, T. 33,128
24 107. (a) 00-100-3
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1 during that long period he at no time had a post (b)
 2 with the Central Government. He further testified
 3 that up to the time he left Tokyo, plans for handling
 4 war prisoners were not yet laid, since the Imperial
 5 Headquarters had made no authentic report and the
 6 problems of transportation, housing, etc. were under
 7 investigation. No study had been made at all as to
 8 POW labor. And he knew of no protests from any
 9 country during his tenure as director.

10 108. It is contended that MUTO must have
 11 read the secret diary (a) of the Imperial Headquarters
 12 concerning the incident at Singapore in February and
 13 March 1942, (b) but as to this pure surmise he testified
 14 that he had never seen it, had no seat in the Imperial
 15 Headquarters, and had no right to see such a document. (c)
 16 The prosecution has failed completely to show any
 17 connection of MUTO to the alleged atrocities. When
 18 the Bataan "Death March" occurred, he was no longer
 19 Chief of the Military Affairs Bureau, and even if he
 20 were, the responsibility could not possibly have
 21 rested on him. We have pointed out, responsibility
 22 for offenses committed in the field rests on the field
 23 commanders. Even if the War Minister had been responsible
 24

25 107. (b) Ex. 3454, T. 33,128-9
 108. (a) Ex. 476, T. 5624
 " (b) 00-102
 " (c) Ex. 3454, T. 33,129-30

for offenses in the field, which he was not, the
 1 blame would have rested, not on the Chief of the
 2 Military Affairs Bureau, but on the Chief of the
 3 Military Service Bureau, TANAKA, Ryukichi, as is
 4 seen from the Ordinance of Military Organization (d)
 5 previously referred to, MUTO's complete and absolute
 6 disconnection with POW offenses is plain.

7 III. SUMATRA

8 109. He arrived in Medan, Sumatra, on
 9 11 May 1942 and assumed command of the Imperial
 10 Guard Division. As he testified, (a) it was the first
 11 time in his thirty years' life as a soldier that he
 12 had ever had a responsible post with a certain decisive
 13 power, and that period ended when he left Sumatra in
 14 1944.
 15

16 110. Alleging the commission of atrocities
 17 against POW and civilian internees in Sumatra, the
 18 prosecution attempts to incriminate MUTO on the sole
 19 ground that he was a divisional commander stationed
 20 there. However, no reference whatever has been made
 21 to connect him with any such offenses. There are good
 22 reasons for this silence. While he was in Sumatra,
 23 military discipline and morale were most strictly
 24

25 108. (d) Ex. 74, Art. 14

109. (a) Ex. 3454, T. 33,131

maintained so that no problems arose between his
 1 soldiers and the natives, interned enemy nationals
 2 or POW. Especially in the light of the fact that
 3 administration of POW and interned civilians did not
 4 come under his control, it is impossible to attribute
 5 to him any legal responsibility in this connection.
 6 The above has been made clear, in addition to MUTO's
 7 affidavit, by the testimony of KOSHI, Saburo and
 8 OHIRA, Hideo. (a) His duty was to defend Northern
 9 Sumatra. Military administration was in the charge
 10 of the military administrative organs which were
 11 stationed in every province and were under the direct
 12 control of the 25th Army; and between military
 13 administration and defense, a clear line was drawn. (b)
 14 That MUTO's sole duty was defense was borne out by
 15 the testimony of OHIRA, his Chief of Staff. (c) He
 16 further makes clear, in full detail, that MUTO had
 17 no duties nor responsibility for either POW or civilian
 18 internees. (d) MUTO states (e) that while he was in
 19 Sumatra there were no hostilities and, accordingly,
 20 no war prisoners taken; nor did he ever employ war
 21 prisoners for labor, although other units did so employ
 22 them.
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110. (a) Ex. 3095, T. 27,655; Ex. 3450, T. 33,061
 25 " (b) Ex. 3454, T. 33,131-2
 " (c) Ex. 3450, T. 33,062-3
 " (d) Ex. 3450, T. 33,063-4
 " (e) Ex. 3454, T. 33,132-3

111. On the matter of military morale and discipline, OHIRA stated that army statistics on crime showed that the 25th Army's discipline was the most strict, and that of all the units under the 25th Army, the Second Imperial Guard Division gave the best showing; further that he recalled no complaint regarding any misconduct of members of the division. (a)
 MUTO testified to the absence of complaints, even though he ordered distinctive markings for his division, (b) which could be recognized at a glance.

112. Lastly, in this connection, we must refer to the witness KOSHI. He was described in the testimony of prosecution witness Leenheer as a Japanese who tried his best to "relieve the women internees there of their suffering." (a) And at the time when he left for Japan, he was especially given a farewell address by an English prosecutor expressing "our deepest gratitude for your treatment of us European people during the war." (b) He was the Assistant Resident of the East Coast Residency in Sumatra from August 1942 to August 1945. (c)

113. He appeared before this Tribunal as a

111. (a) Ex. 3450, T. 33,064-5
 " (b) Ex. 3454, T. 33,133
 112. (a) T. 13,758
 " (b) Ex. 3095, T. 27,667
 " (c) T. 27,656

1 witness in the general phase and stated that he must
 2 say that he owed "all his honor to the guidance and
 3 instruction given by Division Commander MUTO" for
 4 his faultless conduct during war time. (a) We (b)
 5 respectfully refer the Tribunal to his testimony
 6 which specifically details the advice given him by
 7 MUTO.

8 IV. THE PHILIPPINES

9 114. Finally, we must consider MUTO's
 10 activities in the Philippines as Chief of Staff to
 11 General YAMASHITA. The prosecution has alleged the
 12 Japanese Army's maltreatment of POW and atrocities
 13 against the people at large in the Philippines, and
 14 charges MUTO also as responsible for such atrocities.
 15 We believe, however, that we have sufficiently
 16 demonstrated that such an accusation against him is
 17 quite unfounded.

18 115. Our contention on this matter can be
 19 summed up in two points. First of all, it was on
 20 20 October 1944 that MUTO went to take up his post
 21 in the Philippines; that is, two days after the United
 22 States forces landed on Leyte. (a) Consequently we can
 23 disregard all the matters which had taken place before
 24

25 113. (a) Ex. 3095, T. 27,667

" (b) Ex. 3095, T. 27,668-73

115. (a) Ex. 3099, T. 27,729; Ex. 3454, T. 33,134.

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 2 say that he owed "all his honor to the guidance and
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25 113. (a) Ex. 3095, T. 27,667

" (b) Ex. 3095, T. 27,668-73

115. (a) Ex. 3099, T. 27,729; Ex. 3454, T. 33,134.

1 that date. Further, the Japanese Army in the
 2 Philippines was, soon after MUTO's arrival there,
 3 scattered into small isolated groups by the United
 4 States forces, which planned and operated to bring
 5 about such separation of the Japanese units. YAMASHITA's
 6 chain of command was destroyed and communications
 7 were impossible. Such being the case, MUTO and others
 8 were totally unaware of such atrocities as alleged
 9 by the prosecution; and even if they had been aware
 10 of such, there was nothing that they could do to
 11 prevent them. In brief, it was beyond MUTO's control. (a)

12 116. Secondly, MUTO, as Chief of Staff,
 13 had no power to decide anything by himself. He was
 14 with Commander in Chief YAMASHITA always and acted
 15 according to the commander's intentions. Consequently,
 16 from the legal point of view, he cannot be held
 17 (a)
 responsible.

18 117. We wish now to go somewhat into the
 19 details of the above facts, on the basis of the evidence
 20 that has been shown here. The true circumstances as
 21 to the destruction of the command organization of the
 22 Japanese Army in the Philippines are made clear by

- 23 115. (b) Ex. 3453, T. 33,079; Ex. 3451, T. 33,075;
 24 Ex. 3454, T. 33,134, 33,138-40.
 25 116. (a) Ex. 3462, Art. 10, T. 33,283; Ex. 3451,
 T. 33,076.

1 the testimony of MUTO himself, (a) and the excerpt
2 from General Marshall's report. (b) MUTO testified
3 that the Japanese found their command system
4 instantly destroyed and were forced to fight
5 independently, taking up their individual positions;
6 and that he learned of the fighting conduct of the
7 various units only after the war had ended. (c)

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24 117. (a) T. 33,137-9
25 " (b) Ex. 3453, T. 33,077
" (c) Ex. 3454, T. 33,140, 33,143

1 To isolate the Japanese Army in very small groups
 2 was the operational plan of the United States forces,
 3 and it was thus entirely successful. The Tribunal
 4 will recall that this was graphically shown in the
 5 excerpt from General Marshall's Report. ^(d) It shows
 6 that the Japanese drove in all directions in confusion,
 7 became involved in road jams, and "generally dissipated
 8 what chance they might have had to repel the landing
 9 force". ^(e) It further states that the Japanese were
 10 placed "in an impossible situation", and were "forced
 11 into a piecemeal commitment" of their troops. ^(f)

12
 13 118. Especially hard hit were the lines of
 14 communications. Witness KUMEGAWA, who was a member
 15 of YAMASHITA's operations staff at the time, stated
 16 that Japanese facilities were "beyond all comparison"
 17 inferior to those of the United States Army and that,
 18 even before the operations, communications were difficult;
 19 after operations began it was so much worse that it
 20 was barely possible to pass even the most urgent
 21 communications, and "any detailed information was not
 22 reported at all." ^(a) MUTO, too, testified to this
 23 point. ^(b)

24 117. (d) T. 33,077
 25 " (e) Ex. 3453, T. 33,079
 " (f) Ex. 3453, T. 33,079
 118. (a) Ex. 3451, T. 33,074
 " (b) Ex. 3454, T. 33,139-40

1 It is clear beyond question that YAMASHITA's head-
2 quarters, with MUTO as Chief of Staff, had its communi-
3 cations and chain of command completely destroyed and
4 lost the means of controlling the units under its
5 command. All of the atrocities charged to have been
6 committed during MUTO's tenure in the Philippines
7 took place in the confused conditions described
8 above. He and others did not know of the occurrence
9 of such atrocities -- they were not in a position
10 that enabled them to find out. He never ordered the
11 commission of such atrocities, nor, knowing of such,
12 gave his tacit approval.

13 119. We propose now to demonstrate his
14 innocence with regard to particular instances. The
15 prosecution holds him responsible for atrocities
16 perpetrated in the city of Manila. The witness
17 KOBAYASHI, however, testified that YAMASHITA decided
18 to abandon Manila; that MUTO insisted on abandonment
19 from the outset and gave that opinion to YAMASHITA. (a)
20 And witness KUMEGAWA testified that it appeared impossible
21 to defend the region including the city of Manila;
22 that it was wrong, in YAMASHITA's opinion, to turn
23 it into a field of battle; and that Chief of Staff
24 MUTO also insisted on abandonment. Moreover, neither
25 119. (a) Ex. 3099, T. 27,729-30

Imperial Headquarters nor the Southern General Army
1 ordered the city defended to the last. (b) MUTO
2 testified that YAMASHITA never ordered defense of the
3 city to the last; that, on the contrary, he ordered
4 MUTO to study the possibility of making it an open
5 city; that study disclosed that such action was
6 impossible and could not be put into practice; and
7 that YAMASHITA was at last resolved at least to place
8 Manila outside the battlefield. (c)

9
10 120. It is obvious that he made every effort
11 to see that the citizens of Manila would be spared
12 the horrors of war; however, a battle did take place
13 there. Then how and why did it happen? MUTO's
14 testimony shows that some naval forces, as to their
15 land operations alone, were put under Lt. General
16 YOKOYAMA who commanded the Japanese forces in the
17 vicinity of Manila; YAMASHITA had removed to Baguio
18 some time before, to command operations around Lingayen
19 Gulf; when, about 10 February 1945, he learned of
20 continuing hostilities within the city, YAMASHITA
21 ordered immediate withdrawal, but, for unknown reasons,
22 Rear Admiral IWABUCHI, commander of forces within the
23 city, did not obey. Those forces were annihilated;

24
25 119. (b) Ex. 3451, T. 33,072-3
" (c) Ex. 3454, T. 33,141

1 there were about 1,800 army troops, compared to some
2 (a)
3 20,000 in the navy force.
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120. (a) Ex. 3450, T. 33,141-2.

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121. Witness KOBAYASHI showed that Manila was in confusion and chaos; that Japanese headquarters outside the city of Manila endeavored to ascertain actual conditions, but could not because of destroyed communications; that it was as late as 18 February that they obtained any general confirmation of conditions, but that, even then, details remained uncertain.^a Staff member KUMEGAWA explains that headquarters had no reports of the killing of Filipines or ill-treatment of POW; that YAMASHITA and MUTO were utterly ignorant of it; and that murder or maltreatment were never ordered.^b It is clear that alleged atrocities were committed without MUTO's knowledge, and that it was beyond his power to prevent them even if he had had such knowledge.

122. As to countermeasures against guerillas, KOBAYASHI shows that YAMASHITA's orders were directed definitely against "armed guerillas."^a MUTO's testimony is also detailed and concrete: General YAMASHITA ordered attacks on armed guerillas, but never ordered them to be sentenced to death without trial; that he and his staff were utterly ignorant that, in February or March of 1945, some inhabitants of the Batangas district were murdered,

121. a. Ex. 3099, Tr. 27731-2. 122. a. Ex. 3099,
b. Ex. 3451, Tr. 33074-5. Tr. 27733.

nor did he have any report of alleged atrocities in
1 other parts of the islands. An attempt was made to
2 investigate the sole report from Tokyo, but this was
3 fruitless, owing to the total destruction of Japan-
4 ese forces in Manila by the end of February.^{b.}

5 123. When MUTO arrived at his post in the
6 Philippines, POW and internees were under the juris-
7 diction of YAMASHITA. But the fact was that the
8 chief of the prisoners' camp was managing them under
9 the direction of the commander of the line of com-
10 munications; and this was not changed particularly
11 thereafter.^{a.} As to rations, although they were
12 gradually reduced as a result of the general shortage
13 of food in Luzon, there was no marked difference in
14 allowance between the prisoners and the Japanese
15 troops. This is clear from the testimony of a wit-
16 ness in the YAMASHITA trial, ISHIKAWA,^{b.} in addition
17 to MUTO's testimony. Further, the fact that MUTO
18 paid special consideration to the life and welfare
19 of POW and internees under the then-existing difficult
20 circumstances can be seen from the fact that he sent
21 staff-member ISHIKAWA to their camps especially for
22 inspection.^{c.}

23 122. b. Ex. 3454, Tr. 33142-3.

24 123. a. Ex. 3454, Tr. 33144. c. Ex. 3094, Tr. 27629-30.
25 b. Ex. 3094A, Tr. 27627.

124. With the continued reverses of the Japanese Army, the problem of what to do with the prisoners became very serious. YAMASHITA made definite plans for their release, taking steps for proper notice under international law, but was told by the Commander in Chief of the Southern General Army that it was too early to do so. Since it was impossible to remove them from Manila, arrangements were made for their release, including the provision of a month's food supply. MUTO learned only after the war that the chief of the war prisoners' camp had been in error as to notifying the neutral power, Switzerland, as to actions being taken, but that as to other matters he had taken all possible steps to release them without their being involved in hostilities.^a This is verified by witness KOBAYASHI.^b

125. Finally, we emphasize the fact that MUTO was a Chief of Staff and did not have authority to render decisions himself, since "The Army Chief of Staff has as his major duty to assist the Army Commander."^a And in the relationship between MUTO

124. a. Ex. 3454, Tr. 33147.
b. Ex. 3099, Tr. 27734.

125. a. Ex. 3462, Tr. 33283.

and YAMASHITA there was a point of particular
1 significance, in that the disrupted conditions at
2 the time compelled them to be together constantly,
3 eating together, sharing at one time the same desk
4 and the same air-raid shelter. MUTO had no right
5 to decide principal matters, and, in case of doubt
6 as to YAMASHITA's intentions, he reserved instruc-
7 tions until he obtained YAMASHITA's directions. He
8 gave no order to any unit, but confined himself to
9 routine matters which lay within the competence of
10 the Chief of Staff. Even in such routine matters,
11 the commander often gave his views, and MUTO never
12 acted in his stead on any occasion. Further, YAMA-
13 SHITA was always in such good health that illness
14 never prevented him from doing duty even a single
15 day. All this is attested by KUMEGAWA.^{b.}

17 126. From all of the foregoing, I believe
18 it is evident that MUTO bears no responsibility for
19 alleged atrocities in the Philippines, the prosecution
20 having failed to prove his connection with them. But
21 in spite of this, by citing the judicial decision
22 against YAMASHITA, they insist that he is responsible.
23 However, citing the YAMASHITA decision does not and
24 125. b. Ex. 3451, Tr. 33075-6.
25

and YAMASHITA there was a point of particular
1 significance, in that the disrupted conditions at
2 the time compelled them to be together constantly,
3 eating together, sharing at one time the same desk
4 and the same air-raid shelter. MUTO had no right
5 to decide principal matters, and, in case of doubt
6 as to YAMASHITA's intentions, he reserved instruc-
7 tions until he obtained YAMASHITA's directions. He
8 gave no order to any unit, but confined himself to
9 routine matters which lay within the competence of
10 the Chief of Staff. Even in such routine matters,
11 the commander often gave his views, and MUTO never
12 acted in his stead on any occasion. Further, YAMA-
13 SHITA was always in such good health that illness
14 never prevented him from doing duty even a single
15 day. All this is attested by KUMEGAWA.^{b.}

17 126. From all of the foregoing, I believe
18 it is evident that MUTO bears no responsibility for
19 alleged atrocities in the Philippines, the prosecution
20 having failed to prove his connection with them. But
21 in spite of this, by citing the judicial decision
22 against YAMASHITA, they insist that he is responsible.
23 However, citing the YAMASHITA decision does not and
24 125. b. Ex. 3451, Tr. 33075-6.
25

cannot fix any responsibility on MUTO. Moreover,
1 although the YAMASHITA trial took place in Manila,
2 and MUTO was held there until March 1946 and investi-
3 gated as a possible war criminal, he was advised by
4 Captain Carter, the chief of the camp, and by a
5 lieutenant, a member of the War Crimes Investigation
6 Committee, both officers of the United States Army,
7 that he was clear of the crime.^a My colleague,
8 Mr. Howard, has quoted from the majority opinion in
9 the YAMASHITA case, and I invite the Tribunal's
10 attention to the unanswerable logic of Mr. Justice
11 Murphy in the dissenting opinion.
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126. a. Tr. 33150.

127. "In other words," Justice Murphy writes,
1 "read against the background of military events in
2 the Philippines subsequent to October 9, 1944, these
3 charges amount to this: 'We, the victorious American
4 forces, have done everything possible to destroy and
5 disorganize your lines of communication, your effective
6 control of your personnel, your ability to wage
7 war. In those respects we have succeeded. We have
8 defeated and crushed your forces. And now we charge
9 and condemn you for having been inefficient in maintaining
10 control of your troops during the period when
11 we were so effectively besieging and eliminating your
12 forces and blocking your ability to maintain effective
13 control. Many terrible atrocities were committed
14 by your disorganized troops. Because these atrocities
15 were so widespread we will not bother to charge or
16 prove that you committed, ordered or condoned any of
17 them. We will assume that they must have resulted
18 from your inefficiency and negligence as a commander.
19 In short, we charge you with the crime of inefficiency
20 in controlling your troops. We will judge the discharge
21 of your duties by the disorganization which we
22 ourselves created in large part. Our standards of
23 judgment are whatever we wish to make them.'"

24 THE PRESIDENT: You adopt Mr. Justice
25 Murphy's reasoning as your argument?

MR. COLE: I beg your Honor's pardon.

1 THE PRESIDENT: You adopt Mr. Justice
2 Murphy's reasoning as your argument?

3 MR. COLE: Yes, sir.

4 THE PRESIDENT: That is the only way you
5 can get that in.

6 MR. COLE: 128. "Nothing in all history,"
7 Justice Murphy continues, "or in international
8 law, at least as far as I am aware, justifies such a
9 charge against a fallen commander of a defeated force.
10 To use the very inefficiency and disorganization
11 created by the victorious forces as the primary basis
12 for condemning officers of the defeated armies bears
13 no resemblance to justice or to military reality."
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15 129. "International law makes no attempt
16 to define the duties of a commander of an army under
17 constant and overwhelming assault; nor does it impose
18 liability under such circumstances for failure to meet
19 the ordinary responsibilities of command. The omission
20 is understandable. Duties, as well as ability to
21 control troops, vary according to the nature and intens-
22 ity of the particular battle. To find an unlawful
23 deviation from duty under battle conditions requires
24 difficult and speculative calculations. Such calcula-
25 tions become highly untrustworthy when they are made

1 by the victor in relation to the actions of a van-
2 quished commander. Objective and realistic norms of
3 conduct are then extremely unlikely to be used in
4 forming a judgment as to deviations from duty. The
5 probability that vengeance will form the major part
6 of the victor's judgment is an unfortunate but ines-
7 capable fact. So great is that probability that
8 international law refuses to recognize such a judgment
9 as a basis for a war crime, however fair the judgment
10 may be in a particular instance. It is this considera-
11 tion that undermines the charge against the petitioner
12 in this case. The indictment permits, indeed com-
13 pels, the military commission of a victorious nation
14 to sit in judgment upon the military strategy and ac-
15 tions of the defeated enemy and to use its conclu-
16 sions to determine the criminal liability of an enemy
17 commander. Life and liberty are made to depend upon
18 the biased will of the victor rather than upon object-
19 ive standards of conduct."^a

20 130. It must be observed that the above
21 can be more strongly applied to the case of MUTO, who
22 was not commander of the army but only Chief of Staff.

23 131. And now in conclusion: May it please
24 the Tribunal, I should like to mention briefly and
25 concisely the main points, fully demonstrated and

~~129. a. Supreme Court of the U.S., Nos. 61 and 672~~
Misc., October Term 1945

documented herein, which we respectfully urge the Tribunal to consider.

132. The prosecution has failed to connect MUTO with any responsibility for the initiation or execution of either the Manchurian or China Incidents. The closest they have come to any such proof was to describe him, in those days, as being a young officer, thus to classify him, only by insinuation and no proof, with a group which throughout this trial has been vilified; and probably properly so. But we have demonstrated that he opposed them to the point of being in great danger himself, and that he worked earnestly to clear up the trouble they caused, in the 26 February Incident.

133. With regard to Nanking, the prosecution has shown no guilty knowledge or approval on MUTO's part, while we have shown that he devoted himself to the problem of removing from the city those large numbers of troops which had entered contrary to General MATSUI's orders; and that as Vice Chief of Staff he had no power of command and thus no responsibility.

134. As to the Military Affairs Bureau, it has been shown that MUTO had no power of decision in important matters; we have shown this not alone through

our witness NISHIURA, a recognized expert on army organization, but through the prosecution's own witness, TANAKA, Ryukichi. We have shown that he worked earnestly and well for the improvement of Japanese-American relations and the complete avoidance of war.

135. For the period -- the largest part of the war -- that MUTO spent in Sumatra, the prosecution has failed to show his knowledge of or connection with one single atrocity. Sumatra was, during his period there, probably the quietest sector of the whole Pacific War. His troops had a record of exemplary conduct, the best in the Japanese Army. He had no responsibility whatever for the control or administration of prisoners and civilian internees, nor did he ever employ them for labor.

136. Again, as to Manila and the Philippines, the prosecution has failed utterly to connect him, legally, literally, or in any other way, with knowledge, approval or condonation of one single atrocity. Again, he did not have command responsibility. And I am sure that we have demonstrated, to the Tribunal's satisfaction, that throughout his tenure there the conditions of battle were such that control of troops was absolutely impossible even if he had had such responsibility, which he plainly did not have.

137. With regard to over-all policies on
1 problems of prisoners and internees, I submit that
2 MUTO left Tokyo so soon after the outbreak of war that
3 he had no part whatsoever in the establishment of
4 policies. That is a fact which the prosecution has
5 been unable to dispute.

6 138. MUTO has been admired, respected and
7 praised by men of such divergent professions as
8 British Major General Piggott, another professional
9 soldier, and Bishop Walsh, a clergyman of high rank.
10 I submit that such appraisals, by such men, are a
11 tribute to MUTO's integrity.

12 139. MUTO has been shown to be intelligent
13 and efficient. Possession of those qualities does
14 not constitute a crime. It applies to the finest of
15 our public servants in our home countries as well as
16 in Japan, and is a truth for which we can be thankful.

17 THE PRESIDENT: We will recess for fifteen
18 minutes.

19 (Whereupon, at 1445, a recess was
20 taken until 1500, after which the proceed-
21 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Cole.

4 MR. COLE: If it please the Tribunal, I
5 resume at page 100, paragraph 140:

6 140. In commenting on the failure of the
7 prosecution to establish even the semblance of a
8 case against MUTO, I cannot but emphasize two last
9 points. The first is, that, in spite of their em-
10 phasis on the importance of his having attended many
11 conferences which the prosecution claims were all-
12 important, they have been completely unable to quote
13 one word of MUTO's on such occasions. I respectfully
14 call the Tribunal's attention to the undeniable fact
15 that the only attempt to do that was in the prosecu-
16 tion's summation, and based upon an alleged document
17 which is not in evidence, as a result of which that
18 section of their summation had to be corrected by an
19 errata sheet. That, I submit, is eloquent comment
20 on the weakness of their case against him.

21 141. The second point is that because of
22 their lack of proof, they have fallen back on the
23 practice of suggestion, innuendo, implication and pure
24 guesswork, at all times skirting around the perimeter
25 of their alleged facts, but never going straight to

1 the point. I cannot help but resent the use of such
2 expressions in their summation as "specious arguments,"
3 "sheer insolence," "hypocrisy," "naivete or brazenness,"
4 and "brazenness and audacity"; and I submit that the
5 resort to such language displays weakness.

6 142. We urge upon the Tribunal that MUTO was
7 a professional soldier. We have professional soldiers
8 in our own countries, and recognize the vital and
9 indispensable contribution they make to our welfare;
10 we honor them for concepts of diligence and duty
11 which are common to the military throughout the world
12 and throughout history. I repeat -- and I suggest that
13 this is the most important single point in considera-
14 tion of the charges against him -- that in almost two
15 years of trial MUTO has not been shown to have done
16 one single thing which violated the code of military
17 men the world over, whether it be in Japan, or in any
18 country represented on this Tribunal.

19 143. We have been living in a world of
20 angry men, angry at those things which threaten their
21 security. That is a human characteristic, not the
22 exclusive possession of any one nation or group of
23 nations. And there is probably no injustice so great
24 as the "justice" of angry men.
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144. I appeal to this Tribunal, in all sincerity, to find that the accusations against MUTO have gone completely unsubstantiated; that, on the contrary, he has been proved to have worked always with integrity, and for good. This record, I respectfully submit, calls for a finding of "not guilty."

Thank you.

THE PRESIDENT: Mr. Freeman.

MR. FREEMAN: If the Tribunal please, this is the summation for the defendant SATO.

I

INTRODUCTION

The brevity of this summation not only matches that of the prosecution in regard to the accused SATO, but it is entirely in keeping with the complete lack of evidence offered against him.

The prosecution has divided its argument with the fulcrum resting upon the appointment of SATO to the post of Chief of the Military Affairs Bureau in April, 1942. We shall follow their procedure to the end of a logical presentation designed for clarity.

II

ACTIVITIES PRIOR TO SATO BECOMING
A SECTION CHIEF IN THE MILITARY
AFFAIRS BUREAU.

1. The prosecution elects to disregard any activities of this accused prior to 1 August, 1936. Therefore, nothing will be included in this summation prior to that date. On this date the accused SATO was attached to the Army Ordnance Depot and became a staff member of the Military Affairs Bureau. In March, 1937, he was promoted to Lieutenant Colonel, and in June made an investigator of the Planning Board, which position was abolished in October of the same year. In November, 1937 he was appointed a secretary to the Planning Board and relieved of this post in July, 1938 (RR-2, T. 41,596). The Tribunal should bear in mind that during this period his primary duties were those of a staff member of the Military Affairs Bureau.

Now, what significance does the prosecution place upon these appointments, particularly that with the Planning Board? After some reference to acts and orders of the President of the Planning Board, they stated: "It is thus apparent that the Planning Board had been working on this plan . . . the period during

1 which SATO was one of its members." Also: "SATO
2 must have participated in the creation of the plan."
3 Without any assistance from the evidence, SATO be-
4 comes a member of the Planning Board, a participant
5 in plans that "aim at a huge increase in war poten-
6 tials with 1941 as its goal," and enters the alleged
7 conspiracy (RR-6, T. 41,600).

8 All this, notwithstanding the fact that the
9 evidence shows that he was never a member of the
10 Planning Board; that he was with the Board as an
11 investigator three months, and as a secretary six
12 months over a period of less than a year (Ex. 122,
13 T. 768). Notwithstanding the fact that the witness
14 OKADA testified that while he was a member of the
15 War Preparations Section of the Mobilization Bureau
16 of the War Ministry, he himself drew up exhibit 841,
17 which was concerned with military plans and exhibit
18 842, which was a plan for the establishment of a
19 peacetime economy (T. 18,272-73). It is well to note
20 that neither of these plans were ever used because
21 of the outbreak of the China Incident, although
22 approved by the War Ministry (T. 13,272-286). The
23 prosecution attaches no importance to the fact that
24 the Planning Board consisted of members from all
25 walks of life, only a few of whom are among the

1 accused, and that the Planning Board had some 60 to
2 70 full-time investigators and secretaries, none
3 of whom are in the prisoner dock (Ex. 71). It is
4 also unimportant to the prosecution that the accused
5 SATO's position therein was that of a part-time
6 secretary and that these so-called "plans" were
7 drawn up in the War Mobilization Bureau where he had
8 no duty or function (Ibid). No evidence of any
9 nature is offered that this accused ever participated
10 in any activity of the Planning Board, or the prepara-
11 tion of the plans referred to.

12 The prosecution continues to attach import-
13 ance to the accused SATO's relation with the Planning
14 Board for they contend "It was very probable on ac-
15 count of this . . . that he (SATO) was chosen to
16 act as 'explainer' to the Diet of the General Mobili-
17 zation Law and so facilitate its passage." (RR-7,
18 T. 41,601). It is not in furtherance of the prosecu-
19 tion's purpose that the Mobilization Law is entirely
20 different from the five-year industrial plan (Ex. 84,
21 T. 684 and Ex. 2802, T. 25,210), nor that one of
22 the requirements of his position in the Military
23 Affairs Bureau was to explain such bills and their
24 implication to the Diet (Ex. 74, T. 684), and it
25 would not further their objective to admit that the

1 functions of an explainer were merely to answer
2 questions propounded by Diet members (T. 32,959).

3 2. Early in the trial the prosecution sought
4 to attach great importance to two alleged speeches of
5 SATO's purportedly delivered before a conference of
6 Chiefs of the Police at the Home Ministry in August,
7 1938 (Ex. 270, T. 3605). Shortly after the intro-
8 duction of these speeches in evidence, the authenti-
9 cation of which was still in doubt, the prosecution
10 characterized this exhibit as a "record of policy-
11 making conference of the highest Japanese Government
12 officials occurring in January, 1938" (T. 9502).
13 Later they came back with a new and revised trans-
14 lation of this document, but still without proper
15 authentication (Ex. 2235, T. 16,069). Finally, a
16 certificate was obtained from the drafter of the
17 document. What does KUMAGAI, the writer, say about
18 the document? He states that during the session of
19 this conference he attended a lecture given by
20 Colonel SATO, Chief of the Press Section of the War
21 Ministry, who had been invited by the Police Bureau
22 of the Home Office for the occasion. He recalls that
23 after the speeches were made, he jotted down some
24 notes but that SATO had spoken rapidly and his notes
25 were not accurate because he does not use shorthand.

1 For this reason, he explains, in the preface he
2 wrote: "The words and contents are those of the
3 writer." (Ex. 3864, T. 38,578-79). After this the
4 prosecution abandoned its contention that this docu-
5 ment represents "a policy-making conference of the
6 highest Japanese officials." Shifting ground, they
7 now say its importance "lies in the deep knowledge
8 they show SATO to have had of Japan's plans for
9 aggression against Russia." (RR-8, T. 41,602).

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its face that this document

1 Encircling some 60 to 70 secretaries to the
2 Planning Board (Ex. 71), making the unadopted five-year
3 industrial plan and the mobilization law one and the
4 same, they endeavor to bring SATO into the alleged
5 conspiracy. Do they seriously contend that "a great
6 policy-making document of the highest officials of
7 the Japanese Government," born of the notes of an
8 unofficial observer at a Policeman's Conference,
9 binds SATO to a conspiracy charge of accomplishing
10 aggressive war? Weighing the issues in light of the
11 importance they deserve, will they not recognize
12 that the writer himself questions the accuracy of his
13 document? It is apparently unimportant to the prosec-
14 ution that at the time these speeches were made SATO's
15 peculiar duties as head of the Press Section of the
16 War Ministry brought him to the conference, and that
17 since no official record was kept of the speeches, it
18 is highly probable that several speakers, other than
19 SATO, may have been the source of subject matter in-
20 cluded in this document. Could it be that the
21 importance of the document for the prosecution lies
22 in the extreme scarcity of evidential material to be
23 utilized in preparing the accused SATO's summation?
24 This question is not asked lightly. It is obvious on
25 its face that this document could have no probative

1 value. It is suggested that its importance lies in
2 the fact that with the exception of one other speech,
3 all the evidence offered against this accused was by
4 TANAKA, Ryukichi.

5 Be that as it may, the remarkable fact is
6 that this is the sum total of evidence which the
7 prosecution contends is sufficient to indicate "that
8 he (SATO) was at this time a party to the conspiracy
9 charged in Counts 1 to 5 of the Indictment." (RR-8,
10 T. 41,603.)

11 3. In May, 1939, Colonel SATO went to China
12 as a Staff Officer of the China Expeditionary Forces.
13 In July and August, 1940, he visited French Indo-China
14 (Ex. 2238-A, T. 16,083). The prosecution admits there
15 is no evidence of any activities of SATO while on these
16 visits. However, they make this observation: "no doubt
17 the invasion of French Indo-China was carried out in
18 furtherance of the Japanese conspiracies . . . referred
19 to in Count 1 of the Indictment." (RR-9, T. 41,604.)

20 After first admitting there is no evidence as
21 to the accused's activities while on these visits to
22 Indo-China, they ask the Tribunal to presume that he
23 was there preparing the invasion of French Indo-China
24 in furtherance of Japanese conspiracy referred to in
25 Count 1 of the Indictment. They then make this observ-

1 ation: that from the time SATO "entered into the
2 conspiracy, he loses his shield of being a soldier" -
3 but how and when did he enter the alleged conspiracy?
4 According to the prosecution, it was when he became a
5 part-time secretary to the Planning Board, for a period
6 of less than a year, at which time the Planning Board
7 had a rostrum of 60 to 70 full-time secretaries and
8 investigators. (Ex. 71)

9 It is significant to note that the accused SATO
10 is not named in Counts 23 and 33 of the Indictment,
11 which allege that a number of the accused, on or about
12 22 September, 1940, initiated and waged a war of aggress-
13 ion and a war in violation of international treaties,
14 etc., against the Republic of France. These counts in
15 the Indictment could only refer to the so-called
16 "invasion" of French Indo-China. It is apparent that
17 even the prosecution itself placed no importance on
18 SATO's being a Staff Officer to the China Expeditionary
19 Forces when this Indictment was drawn. It is unnecessary
20 to refer to the duties of a Staff Officer. He is little
21 more than aide to the Chief of Staff (Ex. 78, T. 684.)

22 III. ACTIVITIES WHILE A SECTION CHIEF
23 OF THE MILITARY AFFAIRS BUREAU

24 1. In March 1941 SATO became Chief of the
25 Military Affairs Section of the Military Affairs Bureau.

1 There are two sections in this Bureau; namely, Military
2 Administration Section and Military Affairs Section.

3 Among other duties of the Military Administration Section
4 were (Ex.74):

5 a. Matters concerning the fundamental principles
6 of national defense.

7 b. Matters concerning the general control of
8 estimates.

9 c. Matters concerning fundamental munitional
10 administration.

11 The duties of the Military Affairs Section were:

12 a. Matters concerning general affairs of national
13 defense policy.

14 b. Matters concerning international regulations.

15 c. Matters concerning affairs with the Imperial Diet.

16 d. Matters concerning popularization of national
17 defense spirit and counter-plan for nation's thoughts
18 (Ex. 74).

19
20 The prosecution contends that by virtue of his
21 functions in the Military Affairs Section listed under
22 a, "it is thus clear that SATO's section was within the
23 War Ministry primarily concerned with the preparation of
24 this policy of aggression" (RR-11, T. 41,605). It
25 further contends that the decision of Imperial Head-
quarters of April 1941, to resort to war under certain

1 conditions, is clearly a matter concerning national
2 defense policy in general, and therefore, "in the absence
3 of evidence to the contrary, we are compelled to assume
4 that SATO's section was concerned with the preparation
5 of this decision" (RR-12, T. 41,606). This assumption
6 is made, notwithstanding the fact that as a Section
7 Chief he was not permitted to even attend Bureau meet-
8 ings within the War Ministry (Ex. 2238-A, T. 14,331
9 and 16,083), much less attend a meeting of the Imperial
10 General Staff who made such a decision. It also does
11 not consider the fact that function a of the Military
12 Administration Section is almost identical with function
13 a of the Military Affairs Section. Upon what line of
14 reasoning, therefore, are we compelled to assume that
15 SATO's section was concerned with this decision? Accord-
16 ing to the prosecution, the answer lies in the absence
17 of evidence to show that he was not concerned with the
18 decision; reasoning which is void of logic and absurd
19 on its face.
20

21 Actually, however, there is evidence explaining
22 function a of the Military Affairs Section. Colonel
23 NISHIURA, who was Chief of the Military Administration
24 Section at this same time, testified as follows:

25 "One of the matters placed under the charge
of the Military Affairs Section was matters concerning

1 the national defense policy in general. This might be
2 understood to mean that the Bureau had authority to
3 make a final decision on matters of national defense
4 policy, but the exact contrary is the case. Matters
5 of national defense and tactics were the exclusive
6 concern of the Chiefs of the Army and Navy General
7 Staffs." (Ex. 3439, T. 32,955).

8 According to this witness, both the Military
9 Administration Section and the Military Affairs Section
10 were merely to coordinate activities when such plans
11 involved consultation with the War Minister. The
12 duties were purely administrative and had nothing to
13 do with the formulation of policy of national defense
14 plans. This evidence has not been contradicted by the
15 prosecution.
16

17 2. The prosecution contends that in October
18 1941, at the time of the fall of the 3rd KONOYE Cabinet,
19 "when a crucial point had been reached in Japan's
20 conspiratorial aims", SATO busied himself in promoting
21 a TOJO Cabinet (RR-13, T. 41,606). What are the
22 facts? What is the evidence offered to the Tribunal in
23 support of this contention? The prosecution offered
24 the testimony of TANAKA, Ryukichi, who stated that SATO
25 told him he went to see Senior Statesmen ABE and HAYASHI

1 on behalf of TOJO becoming Prime Minister to succeed
2 Prince KONOYE (T. 15,873). SATO's interrogation
3 recites:

4 "I was sent by TOJO to see ABE and HAYASHI
5 following the resignation of Prince KONOYE in October
6 1941, to explain to them that TOJO thought some person
7 like Prince HIGASHI-KUNI would be the logical successor."

8 SATO denied having mentioned TOJO to ABE or
9 HAYASHI. He denied having influenced General TOJO's
10 appointment as Premier. He expressed surprise when
11 informed the next day of TOJO's appointment as Premier
12 (Ex. 3532, T. 34,445). What does TOJO say about this?
13 He testified that TANAKA's testimony on this point has
14 "no factual foundation whatsoever." He relates that
15 he felt no one but Prince HIGASHI-KUNI could have
16 handled the situation with success following the resig-
17 nation of the KONOYE Cabinet and that he had expressed
18 this opinion to Prince KONOYE and to the Lord Keeper of
19 the Privy Seal, KIDO. Therefore, he sent SATO to
20 transmit this opinion to ABE and HAYASHI (Ex. 3655,
21 par. 80, T. 36,909); and it should be noted he was
22 not alone in this thought, for Navy Minister OIKAWA
23 likewise favored Prince HIGASHI-KUNI (T. 34,570).
24

25 What does General ABE have to say about this
visit of SATO's? He states that SATO came to visit him

1 on the day the 3rd KONOYE Cabinet resigned, bringing
2 him a message from General TOJO recommending Prince
3 HIGASHI-KUNI as Prime Minister. General ABE stated
4 that at no time did SATO mention TOJO's name as Prime
5 Minister. He further testified that at the meeting
6 of the Senior Statesmen, after much discussion, KIDO
7 suggested TOJO's name as Prime Minister and there was
8 no objection (Ex. 3522, T. 34,404-411). In the face
9 of this positive contradiction of TANAKA's testimony,
10 the prosecution states: "this cannot possibly affect
11 TANAKA's credit" (RR-13, T. 41,607). ABE and TOJO
12 are confirmed in this regard by KIDO (T. 31,009).
13 In any event, the story of TANAKA becomes highly irrele-
14 vant for ABE was not challenged by the prosecution on
15 cross-examination.

16 3. The prosecution offered in evidence a
17 document entitled "Principle Reasons Alleged for the
18 Commencement of Hostilities against the United States
19 and Britain," dated 11 November, 1941, certified by
20 TANAKA, Ryukichi, which stated that to the best of
21 his knowledge and belief, the document was "prepared
22 by or under the direction of SATO, Kenryo, the Chief
23 of the Military Affairs Section of the Military Affairs
24 Bureau" (RR-14; Ex. 1175, T. 10,362). The purpose of
25 this document was to show by inference that SATO knew

that Japan was preparing to precipitate a war and he
1 or one of the members of his Section prepared this
2 document for the accused MUTO to read at a Bureau
3 meeting. MUTO denied having read this document at a
4 Bureau meeting, or having ever discussed such a matter
5 with SATO (T. 33,161-62). The witness HARA testified
6 that this document "was drafted collectively by officials
7 of the Army General Staff, Navy General Staff, Army
8 Minister, Navy Minister and Foreign Office. It was not
9 written by the Chief of the Military Affairs Section
10 SATO, as testified by the prosecutor's witness TANAKA,
11 Ryukichi." (T. 34, 453). He also testified that it
12 was not an official document prepared in the War
13 Ministry, nor was it considered by any Liaison Confer-
14 ence. He was familiar with the document because he
15 was assistant to Colonel TANEMURA, who participated
16 in the drafting of this document on the part of the
17 General Staff office (Ex. 3533, T. 34,452-460). Atten-
18 tion is called to the fact that he did not testify,
19 either on direct or cross-examination, that any part
20 of this document came from the Military Affairs Section
21 of the Military Affairs Bureau, as is inferred in the
22 summation of the prosecution (RR-14, T. 41,610).
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1 4. The prosecution contends that SATO, by
2 virtue of his position as head of the Military Affairs
3 Section, knew the extent of the Japanese war plans
4 (RR-15, T. 41,611). Their only support of this con-
5 tention is the testimony of TANAKA, Ryukichi, who said
6 that the General Staff draws up the plans for opera-
7 tion, but they cannot be put into effect unless they
8 have the consent of the War Minister because moneys and
9 supplies for carrying out operations are provided by
10 the Military Affairs Bureau (T1 15,359-62). In refuta-
11 tion of this, Colonel NISHIURA, head of the Adminis-
12 trative Section, told the Tribunal that the matter of
13 estimates from the General Staff "is negotiated with
14 the Finance Ministry through the Intendance Bureau;
15 for materials, with the Planning Bureau or the Muni-
16 tions Ministry through the Equipment Bureau."
17 (T. 32,952). He further testified that the Military
18 Administration Section, and not the Military Affairs
19 Section, had certain duties in connection with budget
20 matters. The Military Affairs Bureau's only duty in
21 regard to the budget was performed by the Administra-
22 tive Section whose only function in turn was - "To do
23 its best to adjust the organization and application
24 of budget business of other bureaus and sections to
25 the requirements of national defense, as set by the

General Staff." (T. 32,956).

1 5. The prosecution has laid great stress on
2 a speech made by the accused SATO on 10 March 1942 at
3 Hibiya Hall on Army Day celebration. It is unnecessary
4 to refer to the fact that Japan was at this time al-
5 ready at war and that one of SATO's duties in the
6 Military Affairs Section was that of ordinary wartime
7 propaganda (Div. II, para. 3 of this Summation). This
8 speech naturally was calculated to bolster the morale
9 of both soldiers and Japanese nationals. The speech
10 is not dissimilar to thousands made in every country
11 at war. SATO was still in charge of the Press Section
12 of the War Ministry. It was nothing more nor less
13 than a typical wartime speech and does not merit fur-
14 ther discussion (RR-16, T. 41,611).

16 Up to this time the highest position the ac-
17 cused SATO has held was that of a Section Chief in the
18 War Ministry. Attention is directed to the fact that
19 in the War Ministry there were some twenty odd sec-
20 tion chiefs, not one of whom are in the dock except
21 SATO (Ex. 3031, T. 27,077). Therefore, we submit that
22 undue importance has been attached to SATO's position
23 herein, in so far as it has any bearing on the issues
24 of this case.
25

IV.

ACTIVITIES AFTER APPOINTMENT AS CHIEF
OF MILITARY AFFAIRS BUREAU UNTIL JAPAN'S
SURRENDER.

1. We come now to the real reason why SATO finds himself an accused in this case. Some four months after the outbreak of hostilities in the Pacific, he became head of the Military Affairs Bureau. The prosecution contends that in the position as Chief of the Military Affairs Bureau, SATO was concerned, among other things, with (a) making of domestic and external plans for the conduct of propaganda, and (b) with the drafting of replies to protests forwarded from the Foreign Office in regard to the treatment of POW's (RR-16, T. 41,613). The former we admit but the latter is emphatically denied.

Again the prosecution relies on TANAKA, Ryukichi, the ever-present witness, for their evidence in this regard. (T. 14,286). As usual, TANAKA's testimony is not corroborated by any other witness. To contradict this evidence, the defense offered the witness NINOMIYA, who was head of the Military Affairs Section while SATO was Chief of the Military Affairs Bureau during the war with the exception of a short time in 1942. It is in this section that TANAKA stated replies

1 to protests were prepared. This section, according to
2 TANAKA, received all protests from the Foreign Office.
3 NINOMIYA, however, testified that replies to protests
4 were not prepared by the Military Affairs Section, but
5 by the POW Information Bureau, entirely separated from
6 the Military Affairs Bureau. Protests from the Foreign
7 Office were forwarded to the POW Information Bureau
8 and matters relating to POW's were handled by this
9 bureau (T. 34,414). The prosecution contends that
10 this witness admitted on cross-examination having seen
11 and signed such documents, and, therefore, his evidence
12 is "valueless and was designed to mislead" (RR-20,
13 T. 41,614-15). Let's be perfectly fair. The document
14 presented to NINOMIYA was Item 28 of Exhibit 3367,
15 which NINOMIYA, after examining, stated, and I quote:

16 "Yes, my name appears there, so does the name
17 of the Chief of the Military Affairs Bureau SATO,
18 but in those cases seals by proxy appear."
19

20 Also -

21 "It appears a Staff member of the Bureau by
22 the name of YAMAZAKI impressed the seal by proxy,
23 both as to SATO's name and mine." (T. 34,419)

24 This document was then offered in evidence and became
25 Exhibit 3528. But is this document a protest or a
reply to a protest, as the prosecution infers in its

1 summation? It is not. The document refers to the
2 application of Article 86 of the Geneva Treaty and has
3 nothing to do with protests as to treatment of POW's.
4 This document has been circulated through the entire
5 War Ministry, as is indicated in the introductory cap-
6 tion. The prosecution then asked the witness to iden-
7 tify certain documents, including exhibits 1968 and
8 1973-76, and 3120, in not one of which the Military
9 Affairs Section was concerned, and none of them having
10 anything to do with protests and replies (T. 34,424-
11 433).

12 2. The prosecution makes a number of refer-
13 ences in its summations to various documents wherein
14 they allege distribution to the Military Affairs Bureau,
15 among others, in an effort to point a suspicious finger
16 at the Military Affairs Bureau in relation to POW mat-
17 ters. However, in each instance the captions of these
18 documents showed that they were copies and circulated
19 throughout the War Ministry; as, for illustration, in
20 the document referred to on the cross-examination of the
21 witness NINOMIYA (T. 34,422).

23 The witness KUDO, who was Chief of the 3d Sec-
24 tion of the Bureau of Treaties of the Foreign Office,
25 when asked where the Foreign Office sent complaints,
replied:

"They were sent to the department of Government concerned; namely, the POW Information Bureau."

(T. 27,158)

He also testified that "replies from authorities concerned" meant "with regard to POW's they were received from the POW Information Bureau, and with regard to civilian internees, from the Ministry of Home Affairs and the Ministry for Overseas." (T. 27,157).

Mr. SUZUKI of the Foreign Office also testified that protests went from the Foreign Office to the POW Information Bureau (T. 12,840). Colonel NISHIURA who was head of the Military Administration Section during this time, testified that no protests were received from the Foreign Office in his section, nor did his section prepare any replies to protests (T. 32,960). When asked this question:

"Q. Do you know where policies and regulations were made relative to the treatment of POW's - what Bureau or Section?"

he answered:

"A. By the POW Administration Bureau." (And that can be Control Bureau) That is where they were drafted." (T. 32,962)

TANAKA himself admitted on cross-examination that replies to protests were prepared by the POW

1 Information Bureau; that all reports of POW camp com-
2 manders were made to the POW Information Bureau
3 (T. 14,352 and 14,369). That protests relative to the
4 treatment of POW's and replies thereto were forwarded
5 to and received from the POW Information Bureau in the
6 War Ministry is further corroborated by the accused
7 TOGO, who was Foreign Minister during this period (Ex.
8 3646, T. 35,768-69).

9 Therefore, whose testimony is "valueless and
10 designed to mislead"? It is our submission that TANAKA
11 discredited himself as a witness long ago. The Tri-
12 bunal's attention need not again be directed to the
13 fact that TANAKA has appeared as a witness before this
14 Tribunal some nine or ten times, testifying both for
15 the prosecution and the defense. He admitted that as
16 head of the Military Service Bureau, the Kempei-tai
17 was under his control; that it was necessary that the
18 seal of his bureau be affixed to the document setting
19 up the procedure for the trial of the Doolittle fliers
20 (T. 29,047). It is a matter of evidence that TANAKA
21 has been provided his livelihood while testifying
22 before this Tribunal (T. 2,168-69). He testified
23 that there was friction between his bureau and the
24 Military Affairs Bureau (T. 14,342). It is submitted
25 that his failure to attain the post of Chief of the

1 Military Affairs Bureau has bred resentment within
2 him against the accused SATO.

3 TANAKA's background and conduct during this
4 trial argues strongly against acceptance of his testi-
5 mony. Were it not for the fact that the prosecution
6 predicates its case against the accused SATO largely
7 on this witness' utterances, we would be inclined to
8 pass him off without comment. The very fact of his
9 repeated appearances indicates strongly his willingness
10 to divide his testimony between prosecution and defense
11 as his interests dictate.

12 In July 1946 TANAKA testified that he was
13 dismissed as Chief of the Military Service Bureau in
14 September 1942 (T. 1,947). He later testified, with
15 an elaborate explanation, as to why he resigned as
16 Chief of the Military Service Bureau in September 1942
17 (T. 2,053). He admitted on cross-examination that he
18 was continuously with the prosecution while it was
19 presenting its case, with the exception of two weeks
20 to return to his home in the Fujiya Mountain area. He
21 stated on cross-examination on July 8, 1946, that
22 he had been under daily investigation by the Interna-
23 tional Prosecution Section (T. 2,081).

24 After changing his affiliation from the prose-
25 cution to the defense, on the only occasion he was

1 cross-examined by the prosecution, TANAKA made a mis-
2 statement of fact (T. 29,053), testifying that Colonel
3 OTSUKI was in the Administration Section of the Mili-
4 tary Affairs Bureau and wanted the Doolittle fliers
5 severely punished. The truth came out when Colonel
6 OTSUKI testified here in this trial himself that at
7 that time he was in Saigon and the prosecution did not
8 attempt cross-examination (T. 34,438). We contend
9 that TANAKA has demonstrated that he was, firstly,
10 interested in avoiding indictment himself; secondly,
11 in reaping what personal benefits he could; and third-
12 ly, obtaining revenge upon certain of the accused whom
13 he dislikes.

14 Relying upon the statement of law given by
15 the President of the Tribunal: -

16 "English law appears to be this, as I un-
17 derstand it; Witness A can be asked whether
18 witness B is a credible person, and witness A
19 can base his opinion on the general reputation
20 or the general character of that person,"
21 (T. 14,391) -

22 When the defense first offered TANAKA as a
23 witness, counsel for SATO made this statement:

24 "If the Tribunal please, since the accused
25 SATO intends to attack the credibility of this

1 witness at a later date, we do not join in his
2 being called as a witness." (T.22,713)

3 Later, at the time the accused SATO's individ-
4 ual case was being presented, we offered evidence as
5 to the bad reputation this witness had for truth and
6 honesty. We were overruled by the Court, through the
7 announcement of the Acting President (T. 34,389-392).
8 It is, therefore, our contention that this Tribunal
9 should disregard the testimony of this witness, at
10 least as to the accused SATO.
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3. In its conclusion the prosecution states
1 that the power to prevent atrocities and other breaches
2 of conventions relating thereto rested in the War
3 Minister (RR-24, T. 41,617). They do not charge SATO
4 with the commission of illegal acts but rather with
5 the omission to act in the furtherance of the pre-
6 ventions of such alleged violations. The statement
7 of the prosecution that SATO was in agreement with
8 the policy of the War Minister is misleading, for
9 it infers that he approved of the alleged mistreat-
10 ment of the POW's. Such has never been proven and
11 until the law announced by this Tribunal (T. 33) is
12 changed, the burden of proof rests upon the prosecu-
13 tion to sustain such charges with proof beyond a
14 reasonable doubt.
15

16 Such evidence as has been introduced against
17 SATO as to his words spoken after the commencement of
18 war has no bearing upon the issues arising from the
19 Indictment, unless the heretofore admirable trait
20 of patriotism or loyalty to ones country during a
21 period of war is to become a tainted and condemnable
22 thing.

23 4. The accused SATO relinquished his office
24 as Chief of the Military Affairs Bureau in December,
25 1944, and became Assistant Chief of Staff of the China

1 Expeditionary forces until April, 1945, when he
2 assumed command of the 37th Division in Siam. The
3 prosecution itself states that while this Division
4 had been responsible for atrocities before SATO took
5 command, after his command in April, 1945, "there is
6 no evidence of any atrocities committed by them af-
7 ter that month." (RR-26)

8 V. CONCLUSION

9 1. It is not with factiousness that we say
10 the accused SATO's case presents aspects which are
11 the simplest and yet the most difficult of under-
12 standing. It is difficult to understand why he was
13 indicted in the first place, and the lack of evi-
14 dence presented against him to sustain the charges
15 in the Indictment makes the consideration of the
16 issues involving him the simplest.

17 2. As to the planning, preparation and
18 initiation of aggressive war, the evidence both of
19 the prosecution and defense solidly discloses that
20 there is no basis for a consideration of guilt. As
21 to the waging of aggressive war, which some might
22 accept as a natural consequence of his being a soldier
23 during wartime, we sincerely urge the Tribunal to
24 weigh carefully whether this accused is actually
25 chargeable with an offense such as contemplated by

1 the magnitude of these proceedings. As has been
2 heretofore stated, the factory worker who turned the
3 wheel in the manufacture of a weapon of war, or the
4 farmer who supplied his grain to feed a soldier are,
5 in the same sense, participating in the waging of
6 war. The difference is only one of degree and the
7 degree to which the accused here participated is not
8 such as would warrant a conviction.

9 The President of this Tribunal said:

10 "The distribution of powers and responsibil-
11 ity among the Government departments and sub-
12 departments is very likely the same in Japan as
13 elsewhere. We are concerned about the activities
14 of the individuals and more particularly, the
15 accused." (T. 15,885).

16
17 Wherein SATO's participation in Governmental
18 affairs or the carrying on of his ordinary functions
19 of military office were criminal, is difficult of
20 understanding. At no time has the prosecution offered
21 even a scintilla of evidence that the accused SATO
22 conducted himself other than as a reasonable and
23 patriotic man in compliance with the duties imposed
24 upon him. Nor was he at any time in a position such
25 as could command the charge of policy-making.

3. The prosecution quite appropriately divided

1 their argument into two divisions, one bearing upon
2 SATO's activities before assuming the post of Chief
3 of the Military Affairs Bureau, and the other after
4 that date. The assumption of such office, as the
5 evidence has clearly shown, was after the commence-
6 ment of hostilities. It is not mere speculation or
7 surmise that leads us to the belief that SATO would
8 never have found himself one of the accused in this
9 courtroom had he not assumed this post. After accep-
10 tance of this assignment, the evidence leads us to
11 the sound conclusion that he perpetrated no wrong
12 cognizable by the Charter of this Tribunal.

13 4. We respectfully urge the Tribunal to
14 consider the imprisonment of this man during the long
15 pendency of this trial in light of the utter failure
16 of the prosecution to initially justify even his
17 indictment, much less to prove his guilt. In so
18 doing, we ask for a verdict of "Not Guilty" on each
19 and every count in the Indictment in which he is
20 charged.

21 THE PRESIDENT: Well, what is the next case?

22 MR. FREEMAN: Mr. Levin is ready.

23 THE PRESIDENT: Mr. Levin.

24 MR. LEVIN: Mr. President: In view of the
25 lateness of the hour I think we might well be advised

1 and I would suggest that the Tribunal adjourn until
2 the morning. We have been desirous of cooperating
3 with the Tribunal that there should be no loss of
4 time but our summation has just been completed and
5 has not as yet been completely distributed. I don't
6 believe Brigadier Nolan has his copy.

7 THE PRESIDENT: The head of the Translation
8 Section told me during the recess that he, too, would
9 like a few minutes longer. We will give him those
10 few minutes.

11 We will adjourn until half past nine tomorrow
12 morning.

13 (Whereupon, at 1552, an adjournment
14 was taken until Wednesday, 24 March 1948, at
15 0930.)

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